

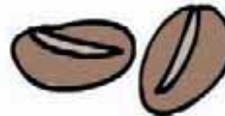
## Subjects that cut across the agreements, and some newer agenda items



The WTO's work is not confined to specific agreements with specific obligations. Member governments also discuss a range of other issues, usually in special committees or working groups. Some are old, some are new to the GATT-WTO system. Some are issues in their own right, some cut across several WTO topics. Some could lead to negotiations.

They include:

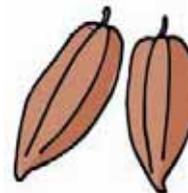
- regional economic groupings
- trade and the environment
- trade and investment
- competition policy
- transparency in government procurement
- trade “facilitation” (simplifying trade procedures, making trade flow more smoothly through means that go beyond the removal of tariff and non-tariff barriers)
- electronic commerce



One other topic has been discussed a lot in the WTO from time to time. It is:

- trade and labour rights

This is not on the WTO's work agenda, but because it has received a lot of attention, it is included here to clarify the situation.



### 1. Regionalism: friends or rivals?

The European Union, the North American Free Trade Agreement, the Association of Southeast Asian Nations, the South Asian Association for Regional Cooperation, the Common Market of the South (MERCOSUR), the Australia-New Zealand Closer Economic Relations Agreement, and so on.

By July 2005, only one WTO member — Mongolia — was not party to a regional trade agreement. The surge in these agreements has continued unabated since the early 1990s. By July 2005, a total of 330 had been notified to the WTO (and its predecessor, GATT). Of these: 206 were notified after the WTO was created in January 1995; 180 are currently in force; several others are believed to be operational although not yet notified.

One of the most frequently asked questions is whether these regional groups help or hinder the WTO's multilateral trading system. A committee is keeping an eye on developments.



## Regional trading arrangements

They seem to be contradictory, but often regional trade agreements can actually support the WTO's multilateral trading system. Regional agreements have allowed groups of countries to negotiate rules and commitments that go beyond what was possible at the time multilaterally. In turn, some of these rules have paved the way for agreement in the WTO. Services, intellectual property, environmental standards, investment and competition policies are all issues that were raised in regional negotiations and later developed into agreements or topics of discussion in the WTO.

The groupings that are important for the WTO are those that abolish or reduce barriers on trade within the group. The WTO agreements recognize that regional arrangements and closer economic integration can benefit countries. It also recognizes that under some circumstances regional trading arrangements could hurt the trade interests of other countries. Normally, setting up a customs union or free trade area would violate the WTO's principle of equal treatment for all trading partners ("most-favoured-nation"). But **GATT's Article 24** allows regional trading arrangements to be set up as a special exception, provided certain strict criteria are met.

In particular, the arrangements should help trade flow more freely among the countries in the group without barriers being raised on trade with the outside world. In other words, regional integration should complement the multilateral trading system and not threaten it.

Article 24 says if a free trade area or customs union is created, duties and other trade barriers should be reduced or removed on substantially all sectors of trade in the group. Non-members should not find trade with the group any more restrictive than before the group was set up.

Similarly, Article 5 of the General Agreement on Trade in Services provides for economic integration agreements in services. Other provisions in the WTO agreements allow developing countries to enter into regional or global agreements that include the reduction or elimination of tariffs and non-tariff barriers on trade among themselves.

On 6 February 1996, the WTO General Council created the **Regional Trade Agreements Committee**. Its purpose is to examine regional groups and to assess whether they are consistent with WTO rules. The committee is also examining how regional arrangements might affect the multilateral trading system, and what the relationship between regional and multilateral arrangements might be.

ON THE WEBSITE:

[www.wto.org](http://www.wto.org) > trade topics > goods  
> regional trade agreements



> See also **Doha Agenda negotiations**

## 2. The environment: a specific concern

The WTO has no specific agreement dealing with the environment. However, the WTO agreements confirm governments' right to protect the environment, provided certain conditions are met, and a number of them include provisions dealing with environmental concerns. The objectives of sustainable development and environmental protection are important enough to be stated in the preamble to the Agreement Establishing the WTO.

The increased emphasis on environmental policies is relatively recent in the 60-year history of the multilateral trading system. At the end of the Uruguay Round in 1994, trade ministers from participating countries decided to begin a comprehensive work programme on trade and environment in the WTO. They created the **Trade and Environment Committee**. This has brought environmental and sustainable development issues into the mainstream of WTO work. The 2001 Doha Ministerial Conference kicked off negotiations in some aspects of the subject.

> See also **Doha Agenda negotiations**

### The committee: broad-based responsibility

The committee has a broad-based responsibility covering all areas of the multilateral trading system — goods, services and intellectual property. Its duties are to study the relationship between trade and the environment, and to make recommendations about any changes that might be needed in the trade agreements.

The committee's work is based on two important principles:

- The WTO is only competent to deal with trade. In other words, in environmental issues its only task is to study questions that arise when environmental policies have a significant impact on trade. The WTO is not an environmental agency. Its members do not want it to intervene in national or international environmental policies or to set environmental standards. Other agencies that specialize in environmental issues are better qualified to undertake those tasks.
- If the committee does identify problems, its solutions must continue to uphold the principles of the WTO trading system.

More generally WTO members are convinced that an open, equitable and non-discriminatory multilateral trading system has a key contribution to make to national and international efforts to better protect and conserve environmental resources and promote sustainable development. This was recognized in the results of the 1992 UN Conference on Environment and Development in Rio (the "Earth Summit") and its 2002 successor, the World Summit on Sustainable Development in Johannesburg.

The committee's work programme focuses on 10 areas. Its agenda is driven by proposals from individual WTO members on issues of importance to them. The following sections outline some of the issues, and what the committee has concluded so far:

### 'Green' provisions

Examples of provisions in the WTO agreements dealing with environmental issues

- GATT Article 20: policies affecting trade in goods for protecting human, animal or plant life or health are exempt from normal GATT disciplines under certain conditions.
- Technical Barriers to Trade (i.e. product and industrial standards), and Sanitary and Phytosanitary Measures (animal and plant health and hygiene): explicit recognition of environmental objectives.
- Agriculture: environmental programmes exempt from cuts in subsidies
- Subsidies and Countervail: allows subsidies, up to 20% of firms' costs, for adapting to new environmental laws.
- Intellectual property: governments can refuse to issue patents that threaten human, animal or plant life or health, or risk serious damage to the environment (TRIPS Article 27).
- GATS Article 14: policies affecting trade in services for protecting human, animal or plant life or health are exempt from normal GATS disciplines under certain conditions.

### A key question

If one country believes another country's trade damages the environment, what can it do? Can it restrict the other country's trade? If it can, under what circumstances? At the moment, there are no definitive legal interpretations, largely because the questions have not yet been tested in a legal dispute either inside or outside the WTO. But the combined result of the WTO's trade agreements and environmental agreements outside the WTO suggest:

- 1. First, cooperate:** The countries concerned should try to cooperate to prevent environmental damage.
- 2. The complaining country can act (e.g. on imports) to protect its own domestic environment, but it cannot discriminate.** Under the WTO agreements, standards, taxes or other measures applied to imports from the other country must also apply equally to the complaining country's own products ("national treatment") and imports from all other countries ("most-favoured-nation").
- 3. If the other country has also signed an environment agreement,** then what ever action the complaining country takes is probably not the WTO's concern.
- 4. What if the other country has not signed?** Here the situation is unclear and the subject of debate. Some environmental agreements say countries that have signed the agreement should apply the agreement even to goods and services from countries that have not. Whether this would break the WTO agreements remains untested because so far no dispute of this kind has been brought to the WTO. One proposed way to clarify the situation would be to rewrite the rules to make clear that countries can, in some circumstances, cite an environmental agreement when they take action affecting the trade of a country that has not signed. Critics say this would allow some countries to force their environmental standards on others.
- 5. When the issue is not covered by an environmental agreement, WTO rules apply.** The WTO agreements are interpreted to say two important things. First, trade restrictions cannot be imposed on a product purely because of the way it has been produced. Second, one country cannot reach out beyond its own territory to impose its standards on another country.

### WTO and environmental agreements: how are they related?

How do the WTO trading system and "green" trade measures relate to each other? What is the relationship between the WTO agreements and various international environmental agreements and conventions?

There are about 200 international agreements (outside the WTO) dealing with various environmental issues currently in force. They are called multilateral environmental agreements (MEAs).

About 20 of these include provisions that can affect trade: for example they ban trade in certain products, or allow countries to restrict trade in certain circumstances. Among them are the Montreal Protocol for the protection of the ozone layer, the Basel Convention on the trade or transportation of hazardous waste across international borders, and the Convention on International Trade in Endangered Species (CITES).

Briefly, the WTO's committee says the basic WTO principles of non-discrimination and transparency do not conflict with trade measures needed to protect the environment, including actions taken under the environmental agreements. It also notes that clauses in the agreements on goods, services and intellectual property allow governments to give priority to their domestic environmental policies.

The WTO's committee says the most effective way to deal with international environmental problems is through the environmental agreements. It says this approach complements the WTO's work in seeking internationally agreed solutions for trade problems. In other words, using the provisions of an international environmental agreement is better than one country trying on its own to change other countries' environmental policies (*see shrimp-turtle and dolphin-tuna case studies*).

The committee notes that actions taken to protect the environment and having an impact on trade can play an important role in some environmental agreements, particularly when trade is a direct cause of the environmental problems. But it also points out that trade restrictions are not the only actions that can be taken, and they are not necessarily the most effective. Alternatives include: helping countries acquire environmentally-friendly technology, giving them financial assistance, providing training, etc.

The problem should not be exaggerated. So far, no action affecting trade and taken under an international environmental agreement has been challenged in the GATT-WTO system. There is also a widely held view that actions taken under an environmental agreement are unlikely to become a problem in the WTO if the countries concerned have signed the environmental agreement, although the question is not settled completely. The Trade and Environment Committee is more concerned about what happens when one country invokes an environmental agreement to take action against another country that has not signed the environmental agreement.

> See also **Doha Agenda negotiations**

## Disputes: where should they be handled?

Suppose a trade dispute arises because a country has taken action on trade (for example imposed a tax or restricted imports) under an environmental agreement outside the WTO and another country objects. Should the dispute be handled under the WTO or under the other agreement? The Trade and Environment Committee says that if a dispute arises over a trade action taken under an environmental agreement, and if both sides to the dispute have signed that agreement, then they should try to use the environmental agreement to settle the dispute. But if one side in the dispute has not signed the environment agreement, then the WTO would provide the only possible forum for settling the dispute. The preference for handling disputes under the environmental agreements does not mean environmental issues would be ignored in WTO disputes. The WTO agreements allow panels examining a dispute to seek expert advice on environmental issues.

### A WTO dispute: The 'shrimp-turtle' case

This was a case brought by India, Malaysia, Pakistan and Thailand against the US. The appellate and panel reports were adopted on 6 November 1998. The official title is "United States — Import Prohibition of Certain Shrimp and Shrimp Products", the official WTO case numbers are 58 and 61.

#### What was it all about?

Seven species of sea turtles have been identified. They are distributed around the world in subtropical and tropical areas. They spend their lives at sea, where they migrate between their foraging and nesting grounds.

Sea turtles have been adversely affected by human activity, either directly (their meat, shells and eggs have been exploited), or indirectly (incidental capture in fisheries, destroyed habitats, polluted oceans).

In early 1997, India, Malaysia, Pakistan and Thailand brought a joint complaint against a ban imposed by the US on the importation of certain shrimp and shrimp products. The protection of sea turtles was at the heart of the ban.

The US Endangered Species Act of 1973 listed as endangered or threatened the five species of sea turtles that occur in US waters, and prohibited their "take" within the US, in its territorial sea and the high seas. ("Take" means harassment, hunting, capture, killing or attempting to do any of these.)

Under the act, the US required US shrimp trawlers to use "turtle excluder devices" (TEDs) in their nets when fishing in areas where there is a significant likelihood of encountering sea turtles.

Section 609 of US Public Law 101–102, enacted in 1989, dealt with imports. It said, among other things, that shrimp harvested with technology that may adversely affect certain sea turtles may not be imported into the US — unless the harvesting nation was certified to have a regulatory programme and an incidental take-rate comparable to that of the US, or that the particular fishing environment of the harvesting nation did not pose a threat to sea turtles.

In practice, countries that had any of the five species of sea turtles within their jurisdiction, and harvested shrimp with mechanical means, had to impose on their fishermen requirements comparable to those borne by US shrimpers if they wanted to be certified to export shrimp products to the US. Essentially this meant the use of TEDs at all times.

## WHAT THE APPELLATE BODY SAID

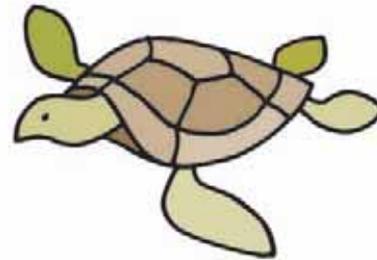
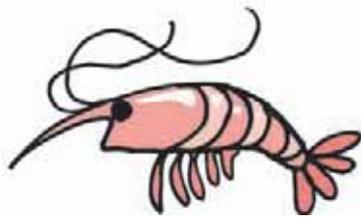
'... We have *not* decided that the sovereign nations that are members of the WTO cannot adopt effective measures to protect endangered species, such as sea turtles. Clearly, they can and should. ...'

### Legally speaking ...

The panel considered that the ban imposed by the US was inconsistent with GATT Article 11 (which limits the use of import prohibitions or restrictions), and could not be justified under GATT Article 20 (which deals with general exceptions to the rules, including for certain environmental reasons).

Following an appeal, the Appellate Body found that the measure at stake did qualify for provisional justification under Article 20(g), but failed to meet the requirements of the chapeau (the introductory paragraph) of Article 20 (which defines when the general exceptions can be cited). The Appellate Body therefore concluded that the US measure was not justified under Article 20 of GATT (strictly speaking, "GATT 1994", i.e. the current version of the General Agreement on Tariffs and Trade as modified by the 1994 Uruguay Round agreement).

At the request of Malaysia, the original panel in this case considered the measures taken by the United States to comply with the recommendations and rulings of the Dispute Settlement Body. The panel report for this recourse was appealed by Malaysia. The Appellate Body upheld the panel's findings that the US measure was now applied in a manner that met the requirements of Article 20 of the GATT 1994.



### The ruling

In its report, the Appellate Body made clear that under WTO rules, countries have the right to take trade action to protect the environment (in particular, human, animal or plant life and health) and endangered species and exhaustible resources). The WTO does not have to “allow” them this right.

It also said measures to protect sea turtles would be legitimate under GATT Article 20 which deals with various exceptions to the WTO’s trade rules, provided certain criteria such as non-discrimination were met.

The US lost the case, not because it sought to protect the environment but because it discriminated between WTO members. It provided countries in the western hemisphere — mainly in the Caribbean — technical and financial assistance and longer transition periods for their fishermen to start using turtle-excluder devices.

It did not give the same advantages, however, to the four Asian countries (India, Malaysia, Pakistan and Thailand) that filed the complaint with the WTO.

The ruling also said WTO panels may accept “amicus briefs” (friends-of-the-court submissions) from NGOs or other interested parties.

### ‘What we have not decided ...’

This is part of what the Appellate Body said:

“185. In reaching these conclusions, we wish to underscore what we have not decided in this appeal. We have not decided that the protection and preservation of the environment is of no significance to the Members of the WTO. Clearly, it is. We have not decided that the sovereign nations that are Members of the WTO cannot adopt effective measures to protect endangered species, such as sea turtles. Clearly, they can and should. And we have not decided that sovereign states should not act together bilaterally, plurilaterally or multilaterally, either within the WTO or in other international fora, to protect endangered species or to otherwise protect the environment. Clearly, they should and do.

“186. What we have decided in this appeal is simply this: although the measure of the United States in dispute in this appeal serves an environmental objective that is recognized as legitimate under paragraph (g) of Article XX [i.e. 20] of the GATT 1994, this measure has been applied by the United States in a manner which constitutes arbitrary and unjustifiable discrimination between Members of the WTO, contrary to the requirements of the chapeau of Article XX. For all of the specific reasons outlined in this Report, this measure does not qualify for the exemption that Article XX of the GATT 1994 affords to measures which serve certain recognized,

legitimate environmental purposes but which, at the same time, are not applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade. As we emphasized in United States — Gasoline [adopted 20 May 1996, WT/DS2/AB/R, p. 30], WTO Members are free to adopt their own policies aimed at protecting the environment as long as, in so doing, they fulfill their obligations and respect the rights of other Members under the WTO Agreement.”

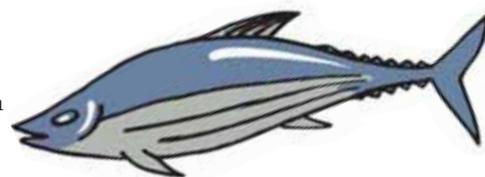
### A GATT dispute: The tuna-dolphin dispute

This case still attracts a lot of attention because of its implications for environmental disputes. It was handled under the old GATT dispute settlement procedure. Key questions are:

- can one country tell another what its environmental regulations should be? and
- do trade rules permit action to be taken against the method used to produce goods (rather than the quality of the goods themselves)?

#### What was it all about?

In eastern tropical areas of the Pacific Ocean, schools of yellowfin tuna often swim beneath schools of dolphins. When tuna is harvested with purse seine nets, dolphins are trapped in the nets. They often die unless they are released.



The US Marine Mammal Protection Act sets dolphin protection standards for the domestic American fishing fleet and for countries whose fishing boats catch yellowfin tuna in that part of the Pacific Ocean. If a country exporting tuna to the United States cannot prove to US authorities that it meets the dolphin protection standards set out in US law, the US government must embargo all imports of the fish from that country. In this dispute, Mexico was the exporting country concerned. Its exports of tuna to the US were banned. Mexico complained in 1991 under the GATT dispute settlement procedure.

The embargo also applies to “intermediary” countries handling the tuna en route from Mexico to the United States. Often the tuna is processed and canned in one of these countries. In this dispute, the “intermediary” countries facing the embargo were Costa Rica, Italy, Japan and Spain, and earlier France, the Netherlands Antilles, and the United Kingdom. Others, including Canada, Colombia, the Republic of Korea, and members of the Association of Southeast Asian Nations (ASEAN), were also named as “intermediaries”.

#### The panel

Mexico asked for a panel in February 1991. A number of “intermediary” countries also expressed an interest. The panel reported to GATT members in September 1991. It concluded:

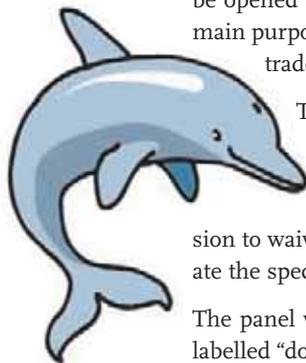
- that the US could not embargo imports of tuna products from Mexico simply because Mexican regulations on the way tuna was produced did not satisfy US regulations. (But the US could apply its regulations on the quality or content of the tuna imported.) This has become known as a “product” versus “process” issue.
- that GATT rules did not allow one country to take trade action for the purpose of attempting to enforce its own domestic laws in another country — even to protect animal health or exhaustible natural resources. The term used here is “extra-territoriality”.

#### PS. The report was never adopted

Under the present WTO system, if WTO members (meeting as the Dispute Settlement Body) do not by consensus reject a panel report after 60 days, it is automatically accepted (“adopted”). That was not the case under the old GATT. Mexico decided not to pursue the case and the panel report was never adopted even though some of the “intermediary” countries pressed for its adoption. Mexico and the United States held their own bilateral consultations aimed at reaching agreement outside GATT.

In 1992, the European Union lodged its own complaint. This led to a second panel report circulated to GATT members in mid 1994. The report upheld some of the findings of the first panel and modified others. Although the European Union and other countries pressed for the report to be adopted, the United States told a series of meetings of the GATT Council and the final meeting of GATT Contracting Parties (i.e. members) that it had not had time to complete its studies of the report. There was therefore no consensus to adopt the report, a requirement under the old GATT system. On 1 January 1995, GATT made way for the WTO.

What was the reasoning behind this ruling? If the US arguments were accepted, then any country could ban imports of a product from another country merely because the exporting country has different environmental, health and social policies from its own. This would create a virtually open-ended route for any country to apply trade restrictions unilaterally — and to do so not just to enforce its own laws domestically, but to impose its own standards on other countries. The door would be opened to a possible flood of protectionist abuses. This would conflict with the main purpose of the multilateral trading system — to achieve predictability through trade rules.



The panel's task was restricted to examining how GATT rules applied to the issue. It was not asked whether the policy was environmentally correct or not. It suggested that the US policy could be made compatible with GATT rules if members agreed on amendments or reached a decision to waive the rules specially for this issue. That way, the members could negotiate the specific issues, and could set limits that would prevent protectionist abuse.

The panel was also asked to judge the US policy of requiring tuna products to be labelled “dolphin-safe” (leaving to consumers the choice of whether or not to buy the product). It concluded that this did not violate GATT rules because it was designed to prevent deceptive advertising practices on all tuna products, whether imported or domestically produced.

#### **Eco-labelling: good, if it doesn't discriminate**

Labelling environmentally-friendly products is an important environmental policy instrument. For the WTO, the key point is that labelling requirements and practices should not discriminate — either between trading partners (most-favoured nation treatment should apply), or between domestically-produced goods or services and imports (national treatment).

One area where the Trade and Environment Committee needs further discussion is how to handle — under the rules of the WTO Technical Barriers to Trade Agreement — labelling used to describe whether for *the way a product is produced* (as distinct from the product itself) is environmentally-friendly.

#### **Transparency: information without too much paperwork**

Like non-discrimination, this is an important WTO principle. Here, WTO members should provide as much information as possible about the environmental policies they have adopted or actions they may take, when these can have a significant impact on trade. They should do this by notifying the WTO, but the task should not be more of a burden than is normally required for other policies affecting trade.

The Trade and Environment Committee says WTO rules do not need changing for this purpose. The WTO Secretariat is to compile from its Central Registry of Notifications all information on trade-related environmental measures that members have submitted. These are to be put in a single database which all WTO members can access.

### **Domestically prohibited goods: dangerous chemicals, etc**

This is a concern of a number of developing countries, which are worried that certain hazardous or toxic products are being exported to their markets without them being fully informed about the environmental or public health dangers the products may pose. Developing countries want to be fully informed so as to be in a position to decide whether or not to import them.

A number of international agreements now exist (e.g. the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, and the London Guidelines for Exchange of Information on Chemicals in International Trade). The WTO's Trade and Environment Committee does not intend to duplicate their work but it also notes that the WTO could play a complementary role.

### **Liberalization and sustainable development: good for each other**

Does freer trade help or hinder environmental protection? The Trade and Environment Committee is analysing the relationship between trade liberalization (including the Uruguay Round commitments) and the protection of the environment. Members say the removal of trade restrictions and distortions can yield benefits both for the multilateral trading system and the environment. Further work is scheduled.

### **Intellectual property, services: some scope for study**

Discussions in the Trade and Environment Committee on these two issues have broken new ground since there was very little understanding of how the rules of the trading system might affect or be affected by environmental policies in these areas.

On services, the committee says further work is needed to examine the relationship between the General Agreement on Trade in Services (GATS) and environmental protection policies in the sector.

The committee says that the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) helps countries obtain environmentally-sound technology and products. More work is scheduled on this, including on the relationship between the TRIPS Agreement and the Convention of Biological Diversity.



ON THE WEBSITE:

[www.wto.org](http://www.wto.org) > trade topics > environment

> See also **Doha Agenda negotiations**

### 3. Investment, competition, procurement, simpler procedures

Ministers from WTO member-countries decided at the 1996 Singapore Ministerial Conference to set up three new working groups: on trade and investment, on competition policy, and on transparency in government procurement. They also instructed the WTO Goods Council to look at possible ways of simplifying trade procedures, an issue sometimes known as “trade facilitation”. Because the Singapore conference kicked off work in these four subjects, they are sometimes called **the “Singapore issues”**.

These four subjects were originally included on the Doha Development Agenda. The carefully negotiated mandate was for negotiations to start after the 2003 Cancún Ministerial Conference, “on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations”. There was no consensus, and the members agreed on 1 August 2004 to proceed with negotiations in only one subject, trade facilitation. The other three were dropped from the Doha agenda.

> See also **Doha Development Agenda**

#### **Investment and competition: what role for the WTO?**

Work in the WTO on investment and competition policy issues originally took the form of specific responses to specific trade policy issues, rather than a look at the broad picture.

Decisions reached at the 1996 Ministerial Conference in Singapore changed the perspective. The ministers decided to set up **two working groups** to look more generally at how trade relates to investment and competition policies.

The working groups’ tasks were analytical and exploratory. They would not negotiate new rules or commitments without a clear consensus decision.

The ministers also recognized the work underway in the UN Conference on Trade and Development (UNCTAD) and other international organizations. The working groups were to cooperate with these organizations so as to make best use of available resources and to ensure that development issues are fully taken into account. An indication of how closely trade is linked with investment is the fact that about one third of the \$6.1 trillion total for world trade in goods and services in 1995 was trade within companies — for example between subsidiaries in different countries or between a subsidiary and its headquarters.

The close relationships between trade and investment and competition policy have long been recognized. One of the intentions, when GATT was drafted in the late 1940s, was for rules on investment and competition policy to exist alongside those for trade in goods. (The other two agreements were not completed because the attempt to create an International Trade Organization failed.)

Over the years, GATT and the WTO have increasingly dealt with specific aspects of the relationships. For example, one type of trade covered by the General Agreement on Trade in Services (GATS) is the supply of services by a foreign company setting up operations in a host country — i.e. through foreign investment. The **Trade-Related Investment Measures Agreement** says investors’ right to use imported goods as inputs should not depend on their export performance.

The same goes for competition policy. GATT and GATS contain rules on monopolies and exclusive service suppliers. The principles have been elaborated considerably in the rules and commitments on telecommunications. The agreements on intellectual property and services both recognize governments' rights to act against anti-competitive practices, and their rights to work together to limit these practices.

ON THE WEBSITE:

[www.wto.org](http://www.wto.org) > trade topics > investment  
[www.wto.org](http://www.wto.org) > trade topics > competition policy



### Transparency in government purchases: towards multilateral rules

The WTO already has an **Agreement on Government Procurement**. It is plurilateral — only some WTO members have signed it so far. The agreement covers such issues as transparency and non-discrimination.

The decision by WTO ministers at the 1996 Singapore conference did two things. It set up a **working group** that was multilateral — it included all WTO members. And it focused the group's work on transparency in government procurement practices. The group did not look at preferential treatment for local suppliers, so long as the preferences were not hidden.

The first phase of the group's work was to study transparency in government procurement practices, taking into account national policies. The second phase was to develop developments for inclusion in an agreement.



ON THE WEBSITE:

[www.wto.org](http://www.wto.org) > trade topics > government procurement

### Trade facilitation: a new high profile

Once formal trade barriers come down, other issues become more important. For example, companies need to be able to acquire information on other countries' importing and exporting regulations and how customs procedures are handled. Cutting red-tape at the point where goods enter a country and providing easier access to this kind of information are two ways of "facilitating" trade.

The 1996 Singapore ministerial conference instructed the **WTO Goods Council** to start exploratory and analytical work "on the simplification of trade procedures in order to assess the scope for WTO rules in this area". Negotiations began after the General Council decision of 1 August 2004.

ON THE WEBSITE:

[www.wto.org](http://www.wto.org) > trade topics > trade facilitation



## 4. Electronic commerce

A new area of trade involves goods crossing borders electronically. Broadly speaking, this is the production, advertising, sale and distribution of products via telecommunications networks. The most obvious examples of products distributed electronically are books, music and videos transmitted down telephone lines or through the Internet.

The declaration on global electronic commerce adopted by the Second (Geneva) Ministerial Conference on 20 May 1998 urged the WTO General Council to establish a comprehensive work programme to examine all trade-related issues arising from global electronic commerce. The General Council adopted the plan for this work programme on 25 September 1998, initiating discussions on issues of electronic commerce and trade by the Goods, Services and TRIPS (intellectual property) Councils and the Trade and Development Committee.

In the meantime, WTO members also agreed to continue their current practice of not imposing customs duties on electronic transmissions.



ON THE WEBSITE:

[www.wto.org](http://www.wto.org) > trade topics > electronic commerce

### The official answer

What the 1996 Singapore ministerial declaration says on core labour standards “We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.”

## 5. Labour standards: consensus, coherence and controversy

Labour standards are those that are applied to the way workers are treated. The term covers a wide range of things: from use of child labour and forced labour, to the right to organize trade unions and to strike, minimum wages, health and safety conditions, and working hours.

### Consensus on core standards, work deferred to the ILO

There is a clear consensus: all WTO member governments are committed to a narrower set of internationally recognized “core” standards — freedom of association, no forced labour, no child labour, and no discrimination at work (including gender discrimination).

At the 1996 Singapore Ministerial Conference, members defined the WTO’s role on this issue, identifying the International Labour Organization (ILO) as the competent body to negotiate labour standards. There is no work on this subject in the WTO’s Councils and Committees. However the secretariats of the two organizations work together on technical issues under the banner of “coherence” in global economic policy-making.

However, beyond that it is not easy for them to agree, and the question of international enforcement is a minefield.

### Why was this brought to the WTO? What is the debate about?

Four broad questions have been raised inside and outside the WTO.

- **The analytical question:** if a country has lower standards for labour rights, do its exports gain an unfair advantage? Would this force all countries to lower their standards (the “race to the bottom”)?

- **The response question:** if there is a “race to the bottom”, should countries only trade with those that have similar labour standards?
- **The question of rules:** should WTO rules explicitly allow governments to take trade action as a means of putting pressure on other countries to comply?
- **The institutional question:** is the WTO the proper place to discuss and set rules on labour — or to enforce them, including those of the ILO?

In addition, all these points have an underlying question: whether trade actions could be used to impose labour standards, or whether this would simply be an excuse for protectionism. Similar questions are asked about standards, i.e. sanitary and phytosanitary measures, and technical barriers to trade.

The WTO agreements do not deal with labour standards as such.

On the one hand, some countries would like to change this. WTO rules and disciplines, they argue, would provide a powerful incentive for member nations to improve workplace conditions and “international coherence” (the phrase used to describe efforts to ensure policies move in the same direction).

On the other hand, many developing countries believe the issue has no place in the WTO framework. They argue that the campaign to bring labour issues into the WTO is actually a bid by industrial nations to undermine the comparative advantage of lower wage trading partners, and could undermine their ability to raise standards through economic development, particularly if it hampers their ability to trade. They also argue that proposed standards can be too high for them to meet at their level of development. These nations argue that efforts to bring labour standards into the arena of multilateral trade negotiations are little more than a smokescreen for protectionism.

At a more complex legal level is the question of the relationship between the International Labour Organization’s standards and the WTO agreements — for example whether or how the ILO’s standards can be applied in a way that is consistent with WTO rules.

### **What has happened in the WTO?**

In the WTO, the debate has been hard-fought, particularly in 1996 and 1999. It was at the 1996 Singapore conference that members agreed they were committed to recognized core labour standards, but these should not be used for protectionism. The economic advantage of low-wage countries should not be questioned, but the WTO and ILO secretariats would continue their existing collaboration, the declaration said. The concluding remarks of the chairman, Singapore’s trade and industry minister, Mr Yeo Cheow Tong, added that the declaration does not put labour on the WTO’s agenda. The countries concerned might continue their pressure for more work to be done in the WTO, but for the time being there are no committees or working parties dealing with the issue.

The issue was also raised at the Seattle Ministerial Conference in 1999, but with no agreement reached. The 2001 Doha Ministerial Conference reaffirmed the Singapore declaration on labour without any specific discussion.

