10 WTO negotiations conducted outside the Doha Round

> We should explore what new type of trade negotiating round is best suited to the new economy. We should explore whether there is a way to tear down barriers without waiting for every issue in every sector to be resolved before any issue in any sector is resolved. We should do this in a way that is fair and balanced, that takes into account the needs of nations large and small, rich and poor. But I am confident we can go about the task of negotiating trade agreements in a way that is faster and better than today.
>
> President Bill Clinton
> Speech to the World Trade Organization (18 May 1998)

Introduction

Rounds are a more controversial topic in the WTO period than they were in the GATT period. The eight that were conducted from the first Geneva Round in 1947 through the Uruguay Round of 1986 to 1994 provided the venues in which the great majority of all multilateral bargains were reached in the GATT system. That is true even for many of the accession negotiations, for while those talks were technically held outside the scope of a round, they often dovetailed with the larger initiative; acceding countries were permitted to engage in the multilateral negotiations, and the terms of their own accessions were often finalized as the end of a round. In the WTO period, by contrast, rounds have come under challenge in two ways. One is through the successes achieved outside of this structure, especially in the sectoral and other deals reached in the period that fell between the end of the Uruguay Round and the launch of the Doha Round. The other is through the apparent (though not definitive) failure of that latter round.

When President Bill Clinton addressed the WTO at the Second Ministerial Conference in 1998, he proposed that members explore alternatives to multi-year, multi-issue rounds as the principal model for multilateral trade negotiations. His somewhat oblique criticism of the single undertaking was soon forgotten by most other members, as just one year later his own country hosted a ministerial conference that aimed to launch what might have been called the Clinton Round. The Seattle Ministerial Conference was instead a disaster, due in part to the president's own divisive comments on the issue of trade and labour rights (see Chapter 11), but that did not deter WTO members from trying again. They succeeded two years later at the Doha Ministerial Conference, launching a round that

was (according to the ministerial declaration) supposed to be concluded by 1 January 2005. At the time of writing, it has gone on for a dozen years and has as yet no end in sight. Several of the participants in the Doha conference have since come to see their accomplishment in launching the round as a tactical success but a strategic failure. In retrospect, the multilateral trading system might be better off if its members gave greater heed to what Mr Clinton told them about rounds in 1998 than what he said to the press about labour in 1999.

The WTO has nevertheless managed to conduct some negotiations outside the structure of the Doha Round. These variously include talks that have taken place before the launch of the round, or concurrently with but apart from the round, or in negotiations that were originally part of the round but for which some of the members propose the conclusion of agreements outside the scope of the single undertaking. These various extra-round negotiations might best be seen in relationship to the Uruguay Round, the components of which achieved differing levels of success and completion. While some of the issues taken up in that round were resolved definitively (e.g. the outlawing of "voluntary" export restraints), most bargains involved some degree of ambiguity or incompletion and the topics carried over in one way or another to post-round negotiations. At some risk of oversimplification, these carry-overs can be categorized in the taxonomy shown in Table 10.1. In a few cases, the new negotiations aimed to fill in some very large blanks that negotiators had left in their agreements, such as their inability to draft language in the General Agreement on Trade in Services (GATS) concerning such key issues as subsidies and safeguards. In other cases, the reviews or negotiations were to deal with more arcane questions, typically areas where language had been approved in an agreement but for which further review was now sought. In still other cases, there soon emerged a sense of buyer's remorse over the bargains that had been struck in the Uruguay Round, typically on the part of developing countries but also among some of the developed, and proposals were made to slow the implementation or revise the terms of the agreements in question. Some of those issues were taken up in the period that fell between the old and the new round, with a few of these negotiations beginning when the signatures on the Marrakesh Final Act were barely dry, while others were held in abeyance until a new round (or its functional equivalent) might be launched.

This chapter reviews several of the negotiations (other than accessions) that have been conducted in the WTO but outside the scope of the Doha Round. Most of these took place during the period between the rounds, and most of those may be classified under the broad rubric of the built-in agenda. A few of them emerged spontaneously, most notably in the case of the Information Technology Agreement (ITA), while others have taken place during the same time as, but not as part of, the Doha Round. A few other topics that fall within this general category of negotiations outside the round are taken up in other chapters, especially in the area of discrimination (Chapter 13).

Table 10.1. Post-Uruguay Round negotiations in the WTO

Category	Description	Principal examples and results
Unfinished business from the Uruguay Round	Issues that were not fully resolved in the Uruguay Round and for which negotiators set a built-in agenda, either in the agreements or in separate decisions calling for further negotiations.	See Appendix 10.1 for a list of the principal items in the built-in agenda. Most provided for reviews that might lead to recommendations for changes in agreements, but some provided for the completion or initiation of substantive negotiations on either rules or market access commitments (both types being prominent in GATS).
Architectural foundations for future negotiations	Agreements that set the basic terms of obligations and provided for individual commitments, but achieved relatively little actual liberalization.	The Agreement on Agriculture included scheduled commitments on domestic support and GATS included commitments on service sectors, but in both cases there was considerable "water" in the schedules negotiated in the Uruguay Round. Both agreements provided for new negotiations to start in 2000.
Incremental progress on market access	Tariff negotiations continue from one round to the next for all lines that have not yet reached bound rates of zero.	Negotiations in most sectors awaited the start of a new round, but in the interim members also initiated new negotiations for the Information Technology Agreement and in a few other sectors.
Buyer's remorse over Uruguay Round agreements	Agreements and commitments in areas that some members came to regret approving and hoped to revise.	Developing countries sought modifications to three types of Uruguay Round agreements: TRIPS provisions concerning pharmaceutical patents and public health, the phase-out of textile and apparel quotas and the issues collectively known as "implementation".

As is the case for many other key terms used in the WTO, different meanings might be given to the term "built-in agenda". The narrowest usage covers two major items that carried over from the Uruguay Round, with articles in both the Agreement on Agriculture and the GATS providing for the launch of new negotiations on these issues in the year 2000. Sometimes when people speak of the built-in agenda they mean only these two negotiations, and only in the sense of these talks as an alternative to a larger round. In Article 20 of the Agreement on Agriculture the members agreed that "negotiations for continuing the process [of reform] will be initiated one year before the end of the implementation period" (i.e. by the start of 2000). These negotiations were to focus, among others, on "what further commitments are necessary to achieve the … long-term objectives" of "substantial progressive reductions in support and protection resulting in fundamental reform." Similarly, GATS Article XIX provided for "successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement [i.e. by the start of 2000] and periodically thereafter, with a view to achieving a progressively higher level of liberalization." Those provisions did not specify how the negotiations were to be conducted, but negotiators clearly intended that the two topics be taken up simultaneously – whether in a *pas de deux* or as part of a larger round[1] – and thus allow for productive trade-offs between them.

A somewhat wider sense of the term, and the one that is most typically meant, covers not just these two "big-ticket" items but also many others that were provided for in Uruguay Round agreements and decisions. There are 27 such items enumerated in Appendix 10.1. Some of these items had no fixed date. For example, under GATS Article XV members agreed to "enter into negotiations with a view to developing the necessary multilateral disciplines to avoid [the]

trade-distortive effects" of subsidies in services, noting that the "negotiations shall also address the appropriateness of countervailing procedures," but provided no guidance on when these talks were to commence or conclude. That stands in contrast, for example, to the GATS provisions on government procurement (which specified when negotiations were to begin) and safeguards (which stated when the results of negotiations were supposed to enter into effect). GATS Article VI was also vague on the timing of negotiations on domestic regulation, providing only that "the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines" in this area. In the end, these differing levels of sequential specificity proved to be distinctions without a difference for several of the items. Whereas most of the items listed in Appendix 10.1 were resolved within a few years of the WTO entering into effect, and two appear never to have been addressed, several others were ultimately folded into the Doha Round.

The broadest definition of the "built-in agenda" would be based not on whether the negotiations were mandated by Uruguay Round instruments but whether they took place between that round and its successor. That would mean defining the ITA, which is arguably the most significant trade agreement to be achieved during the entire period between the rounds, as part of the single undertaking. That would be a misnomer, however, as the Uruguay Round negotiators did not contemplate anything like the ITA when they were completing their work.

A final horizontal comment is in order before turning to the individual items negotiated outside the round. Several of them exemplify both the possibilities and the limitations of what can be achieved when one follows Mr Clinton's recommendation that negotiations be conducted piecemeal and outside of a formal round, which also implies working within the limitations of the existing US mandates. The type of negotiation he proposed would allow US negotiators to operate without a grant of fast-track negotiating authority. These delegations of power provide special rules for congressional consideration of the implementing legislation for trade agreements (see Chapter 6) and are the US complement to the single undertaking (see Chapter 9). When Mr Clinton spoke to the WTO the last such grant had already expired in 1994. The US negotiators were not sure if, or when, their fast-track powers would be renewed and they opted to concentrate on those deals that could be made within the scope of other authorities. The simplest of these is the inherent authority of the president to enter into agreements that impose no new obligations and thus require no action by the US Congress.[2] The agreements discussed below on telecommunications services, financial services and global electronic commerce were all important, but none of them required any action by Congress because they did not make any changes in US law. In working around the limitations placed on them, the US negotiators were also able to "get something for nothing" from their trading partners. They also made use of a residual authority that Congress had granted in Section 111 of the Uruguay Round Agreements Act. It gave the president the power to proclaim changes in tariffs on certain products if "the United States agrees to such modification or staged rate reduction in a multilateral negotiation under the auspices of the WTO." The authority, which has no expiration date, applies only to those product sectors that were subject to "zero-for-zero" offers during the Uruguay Round.[3] The Clinton administration

used this authority to implement the ITA, a pharmaceutical agreement, the Tariff Initiative on Distilled Spirits with the European Union and the US–Japan Agreement on Distilled Spirits.

GATS protocols

Negotiations over services are the most significant constant in the WTO period, having been under way on a more or less continuous basis since the immediate aftermath of the Uruguay Round and the entry into force of GATS. These negotiations can be roughly divided into three phases, starting with negotiations over sectoral protocols and other matters that took place in the period of the built-in agenda, followed by the GATS 2000 negotiations that were eventually folded into the Doha Round, and then yet a new turn in 2012 and 2013, when several members began negotiations over a proposed plurilateral agreement outside of the Doha Round. Those third negotiations, which aim to produce an International Services Agreement, are not covered here as they remain at the time of writing in an early stage of development.[4] It is not even certain whether they will be formally conducted inside or outside the WTO. The discussion that follows thus focuses on the first of these phases, with the GATS 2000/Doha Round services negotiations taken up in Chapter 12.

GATS was arguably both the most significant expansion in the scope of the trading system to emerge from the Uruguay Round as well as the least complete agreement to be produced by those negotiations. Its principal accomplishments were to affirm that trade in services is as much a part of the multilateral trading system as is trade in goods, to establish the basic architecture by which countries may make binding commitments in this area and to incorporate the first set of scheduled commitments from countries. Those achievements must be balanced against three areas in which the negotiations fell short. One was in the failure to complete negotiations on GATS rules regarding subsidies, safeguards, government procurement and domestic regulation.[5] Provisions in GATS call for further negotiations on each of these issues, some of which set deadlines (none of which were met) and others of which did not; these are listed in Appendix 10.1. Second, the Uruguay Round negotiators failed to complete the talks they had begun on the financial, telecommunications and maritime transportation sectors, as well as on the movement of natural persons, approving instead four decisions calling for the completion of each of these negotiations. The incomplete nature of the GATS negotiations is demonstrated by the fact that these various decisions and GATS articles providing for further negotiations account for ten of the 27 items listed in Appendix 10.1.

The third area in which the GATS negotiators came up short is in the actual liberalization of services sectors. Despite the fact that all WTO members scheduled GATS commitments, the great majority of the items in these schedules consisted either of binding their measures at the applied level or including "water" in their schedules that would allow them to impose more restrictive measures in some future regulatory initiative or contingency. In their quantitative comparison of GATS schedules, Doha Round offers, and applied measures Gootiiz and Mattoo (2009) showed that on average the GATS commitments countries made in the Uruguay Round and in the period of

the built-in agenda were 2.3 times more restrictive than the actual policies in place at that time. Nor was this a uniquely Uruguay Round phenomenon. Their analysis shows that the offers that members had submitted up until that time in the Doha Round would remain, on average, 1.9 times more restrictive. Commitments that lock in the status quo should not be dismissed altogether. Reforms that are enshrined in this way can be enforced through dispute settlement, but that is not the case for autonomous reforms and *de facto* liberalization. That distinction may be important not just to one's trading partners, but also to prospective foreign investors, as a government that inscribes its reforms in a treaty obligation by way of GATS schedules and other WTO commitments can provide a more effective guarantee that the regime will be stable and predictable. That said, the GATS has been less successful as an instrument of liberalization than as a means of "locking in" the reforms that countries undertook prior to or during the negotiations.

The unfinished sectoral negotiations were taken up immediately after the Uruguay Round ended. These were talks that relied heavily on regulators and experts. "The trade guys were there," recalled Stuart Harbinson, "but the people who were really involved and calling the shots were the regulators from capitals."[6] The results of these negotiations, as expressed in the scope of members' commitments, are summarized in Appendix 10.2. Readers should note that this tally is limited to a simple dichotomy that indicates whether a member did or did not schedule a commitment in one of the sectors at issue. The width and depth of those commitments vary considerably from one member to another.

Note also that we start below with the second protocol because, in an odd bit of WTO accounting, there is no "first protocol". This designation had originally been reserved for an instrument that was intended to incorporate commitments received after the round from LDCs, but it was then decided not to package the schedules of these LDCs into a separate protocol. By the time that decision was made the first of the instruments discussed below had already come to be numbered as they are.

Second and fifth GATS protocols: financial services

The Second Annex on Financial Services and the Decision on Financial Services provided for extended negotiations in this sector in the first half of 1995. The negotiations went on for a month longer than originally planned, producing an interim agreement at the end of July. The United States objected to the limited market-opening offers by some members and announced that it would make binding commitments only for existing operations of foreign financial firms. Washington also took a broad most-favoured-nation (MFN) exemption with regard to new entry and operations for all financial services. The European Community proposed that the offers made to date be preserved, thus leading to the interim agreement on financial services. Other members agreed to maintain their existing offers and return for a second round of negotiations.[7] Twenty-nine WTO members (counting the 15 members of the European Community as one) improved their schedules of specific commitments and/or removed, suspended or reduced the scope of their MFN exemptions in financial services.[8] Those improved commitments were annexed to the Second Protocol to the General

Agreement on Trade in Services. The Second Protocol, and the commitments annexed to it, were adopted 21 July 1995 and entered into force on 1 September 1996.

Negotiations then reopened in April 1997. These led to a new and improved set of commitments in financial services that December in the Fifth Protocol to the GATS, so numbered because two other protocols had been produced in the meantime. It had annexed a total of 56 schedules of commitments, representing 70 members[9] and 16 lists of MFN exemptions (or amendments).[10] Members adopted this protocol on 14 November 1997, which was open for ratification and acceptance until the end of January 1999. Fifty-two members accepted the protocol by the due date, and put it into force on 1 March 1999. The total number of WTO members with commitments in financial services rose to 104. India, Thailand and the United States[11] withdrew their broad MFN exemptions based on reciprocity, and a few members submitted limited MFN exemptions or maintained existing broad MFN exemptions.

The actual results of these negotiations were limited. "[F]ew developing countries made sweeping commitments to market access and national treatment in the 1997 FSA negotiation," summarized Dobson (2007: 308). "Latin American and Asian economies were among the most reluctant to open their insurance and core banking sectors, with Eastern Europeans and Africans ahead of them in their commitments." Several countries used the opportunity to let their commitments catch up to liberalization that they had achieved autonomously in the few years that passed since the round, notably in Eastern Europe:

> Several (like the Czech Republic, Slovak Republic and Slovenia) gave up the possibility of discretionary licensing in banking based on economic needs, while others (like the Czech Republic in air transport insurance) eliminated monopolies in certain areas of insurance. Several countries (like Bulgaria in insurance) allowed commercial presence through branches while others liberalized cross-border trade and consumption abroad (like Poland with respect to insurance of goods in international trade). Liberalizing trends were also visible in other regions: some countries (like Brazil) replaced prohibitions on foreign establishment with a case-by-case authorization requirement and some liberalized cross-border trade (for instance, the Philippines with respect to marine hull and cargo insurance) (*Ibid.*: 310).

Rajan and Sen (2002: 30) also found that the commitments that Indonesia, Malaysia and Thailand made on financial and telecommunications services "have been at status quo or below it."

What kind of impact does liberalization of financial services have on trade and welfare? The answer depends in part on how one poses the question. Viewed at a global level the potential gains seem small. "The share-weighted average of financial services in total production costs for the world as a whole is 8.8 per cent," Verikios and Zhang (2001: 44) noted, but the potential gains are not on that same order of magnitude. "Removing all barriers to trade in financial services," they calculate (*Ibid.*: 46), "increases world real GNP by 0.09 per cent." The

attractions for individual countries can be much higher. Using GATS commitments as one measure of financial sector openness, Francois and Eschenbach (2002: ii) found "a strong positive relationship between financial sector competition/performance (meaning foreign bank access to domestic banks), and between growth and financial sector competition/performance." Hoekman (2006: 27) concluded in his survey that the "literature tends to find a positive link between financial sector openness and economic growth performance." Countries with open financial and telecommunications sectors have average growth rates about one percentage point higher than other countries, according to the calculations of Mattoo et al. (2006) (see also Wang et al., 2008).

Third GATS protocol: movement of natural persons

The movement of natural persons, more commonly called Mode 4, is the most controversial aspect of services negotiations between developed and developing countries. This division was not bridged during the period of the built-in agenda nor indeed in the Doha Round negotiations that followed. While Mode 4 commitments might in principle offer more opportunities to exporters in populous developing countries in actual practice these commitments tend to be structured in ways and concentrated in sectors that are of greater interest to developed countries. The negotiations over the Third Protocol to the General Agreement on Trade in Services did not deviate from that broader pattern. Most of the commitments in these renewed negotiations were made by developed countries, and in terms that were primarily of interest to countries in that same group. India was the only developing country to make commitments in this protocol.

"Within a given sector," according to a WTO Secretariat (2002: 3) analysis, "trade conditions for mode 4 tend to be significantly more restrictive than conditions for other modes." Moreover:

> Members' schedules are mostly biased in favour of "intra-corporate transferees", hence making the economic value of such commitments dependent on access conditions for mode 3. Such commitments are of limited interest to Members which, given their level of economic development, are not significant foreign investors. Schedules are also more open for highly skilled labour, where developing countries tend to be net importers, as their comparative advantage lies with relatively unskilled labour-intensive services. It is also widely acknowledged that Members' mode 4 commitments do not generally reflect actual entry conditions for natural persons, as Members have bound less than the access granted in practice (*Ibid.*: 4).

Negotiators agreed in the Decision on the Negotiations on Movement of Natural Persons at the end of the round to improve commitments on the movement of natural persons in the six months after the WTO came into force. A Negotiating Group on Movement of Natural Persons supervised the bilateral negotiations on Mode 4, which concluded on 28 July 1995. As a result, six members improved their commitments on the movement of natural persons: Australia, Canada, the European Community and its member states, India, Norway and

Switzerland. The improvements mostly concern access opportunities for additional categories of service suppliers (usually independent foreign professionals in a number of business sectors) or the extension of their permitted duration of stay. These upgraded commitments were attached to the Third Protocol to the General Agreement on Trade in Services, which entered into force on 30 January 1996. The Third Protocol provides for the annexation of the new commitments to the Uruguay Round services schedules of the six members concerned.

Fourth GATS protocol: basic telecommunications

The negotiations on basic telecommunications produced more actual liberalization than did most of the other GATS talks after the Uruguay Round. Some governments made commitments in the Uruguay Round on value-added telecommunication services, but very few did so for basic telecommunications. Basic telecommunications services, usually supplied by monopolies and less commonly open to competition, were at the time distinguished from the more liberalized value-added or enhanced services such as e-mail, voice mail, online information and database retrieval, data processing, and electronic data interchange. The Decision on Negotiations on Basic Telecommunications that ministers adopted in Marrakesh on 15 April 1994 set a tight schedule. Negotiations began in the very next month, initially with the participation of 33 members, under the auspices of the Negotiating Group on Basic Telecommunications. The decision directed the negotiations to conclude by the end of April 1996. By that time 53 members were participating fully, and another 24 governments (including some in the process of accession) had observer status.

Negotiators agreed that the talks would cover both basic telecommunications services as well as those provided through resale. That meant that they went beyond negotiating market access commitments on the cross-border supply of basic telecommunications to cover commercial presence relating to the ability of foreign firms to own and operate telecommunications networks and infrastructure. Negotiators opted not to develop a definitive listing of what constituted basic telecommunications, but agreed that the talks would deal with any and all telecommunications services that involve real-time transmission of customer supplied information (i.e. without adding value). These included (among others) domestic and international voice telephony, mobile services, data transmission, facsimile, private leased circuits, satellite services and video transport services.

The talks produced offers from 48 governments by the deadline, but the scheduled commitments did not achieve the "critical mass" that the major trading countries sought. WTO Director-General Renato Ruggiero wished to preserve the results achieved so far, and suggested attaching them to a protocol and setting a one-month period early in 1997 for participants to re-examine their positions on market access and MFN treatment. Participants accepted the director-general's proposal in a decision that the Council for Trade in Services adopted on 30 April 1996, establishing 15 February 1997 as the closing date. Talks resumed in July 1996, and starting in August 1996 participants met monthly and held numerous bilateral negotiations on market access. They also maintained informal contacts at the Singapore Ministerial Conference in December 1996.

This time the critical mass was met. Sixty-three of the 69 governments submitting schedules included commitments on regulatory disciplines by the February 1997 deadline, 57 of which committed to the associated Reference Paper. That was a significant increase over the results in April 1996, when 44 out of the 48 governments submitting offers included commitments on regulatory disciplines and just 31 committed to the Reference Paper. The numbers that signed on to these commitments grew in later years, with 109 WTO member governments having GATS commitments on telecommunications and 80 committing to the Reference Paper. Most of those additional commitments came as a result of accessions; all countries that have acceded since the conclusion of this paper have signed on to it. Members typically made "technology-neutral" commitments that apply to any technologies that exist or later become available to supply the committed services. By way of example, a technologically neutral commitment on data transmission would include, unless otherwise stated, data transmitted by copper wire, satellite, Internet protocol, or fibre-optic networks and all forms of mobile technologies. For this reason, new commitments do not need to be secured on, for example, broadband data services.

The Reference Paper sets out basic legal principles for a regulatory framework to underpin the market access commitments. The commitments cover competition and interconnection safeguards and rules to promote transparent and fair mechanisms for licensing, universal service and allocation of scarce resources such as radio spectrum. The Reference Paper also requires that a member have a regulator that is independent of the entities that operate telecom networks or otherwise supply the services. One example is the requirement that members provide "cost-oriented interconnection." Section 2.2 of the Reference Paper provides that "[i]nterconnection with a major supplier will be ensured at any technically feasible point in the network," and that:

> Such interconnection is provided … in a timely fashion, on terms, conditions … and cost-oriented rates that are transparent, reasonable, having regard to economic feasibility and sufficiently unbundled so that the supplier need not pay for network components or facilities that it does not require for the service to be provided[.]

This is a key aspect of reform, and even some governments that have made no commitments in this sector have used the Reference Paper as a blueprint for telecommunications reform and implemented cost-oriented interconnection on an autonomous basis. "Interconnection policy is the bedrock for regulating the transition to competition," as Cowhey and Aronson (2007: 408) noted, because the "interconnection policy requires incumbents with essential facilities to share network economies with new entrants on economically efficient terms." Participants also elaborated in the Reference Paper a set of principles covering such matters as competition safeguards, interconnection guarantees, transparent licensing processes, and the independence of regulators. The Fourth Protocol and its annexed documents entered into force on 5 February 1998.

The question arises as to how much of a difference these commitments make in the real world. That question is especially relevant in light of the "water" that may remain in many members' schedules. In a study that controlled for geographical region and income level, Bressie et al. (2005: 20) found that "countries that have made GATS commitments in basic telecommunications tend to outperform those countries that have not made GATS commitments in basic telecommunications with respect to fixed and mobile penetration as well as sector revenues." Their results supported "the hypothesis that companies are more likely to make significant investments in countries that have made GATS commitments in basic telecommunications."

The negotiations may also have had a dynamic effect in domestic policy-making. Many governments used the impetus of the negotiations and the pressure of a WTO deadline to push domestic reform along more quickly than they might otherwise have been able to move. Some of them took advantage of this opportunity to privatize their telecommunications monopolies or otherwise to overcome entrenched opposition from entities that had grown accustomed to being free of competitive pressure. These included some developing country members who were enthusiastic about liberalization; some of them moved faster toward full competition than some developed members who had liberalized earlier, but only partially (e.g. Australia and Canada had not yet liberalized infrastructure, and the United States has not yet liberalized local phone services). At the outset of the negotiations the European Community was not yet sure whether or not it would maintain existing monopolies on the underlying infrastructure. The ambitions of both developed and developing governments grew over the course of the negotiations.

Maritime services

While the negotiations on financial and especially telecommunications services can be deemed successes, the negotiations on maritime services failed to produce a new protocol. The negotiations in this sector instead got folded into the Doha Round GATS talks and, as a result, have not produced results at the time of writing. The only source of new commitments in this sector comes by way of accessions. Members made fewer commitments in this sector than they have in many others, as can be appreciated from the data in Appendix 10.2, but that does not necessarily mean that actual practices in this sector are more restrictive. To the contrary, a WTO Secretariat background note observed that "maritime transport is generally considered as one of the most highly liberalized services."[12] The note speculated that the gap between what members commit to and what they actually do may indicate that "commitments simply reflect legislation or international agreements that may still exist, but are no longer applied, such as the United Nations Code of Conduct for Liner Conferences."

The sector as a whole may be more open than others but sharp differences remain between the *demandeurs* and a few countries with notoriously tight restrictions. The former group includes a heterogeneous mix of developing and developed economies, with the composition determined in large part by geography: the *demandeurs* include several members that are either islands (Australia, Iceland, Japan, New Zealand and Chinese Taipei) or nearly so (Hong

Kong, China), and others have long coasts (Canada, the Republic of Korea, Mexico and Norway) or a particular interest in shipping (Panama). Their number also includes Switzerland, a landlocked country that is nonetheless the headquarters for large shipping countries. The European Union, whose membership includes traditional maritime states such as Greece and the United Kingdom, is also a *demandeur.* Groups such as the European Communities Shipowners Association and the Council of European and Japanese Shipowners Associations were among those hoping that renewed negotiations in this sector would help them to overcome such barriers as restricted/regulated access to port and port services, preferential cargo allocation, restrictions on establishment of owned branch offices, discriminatory measures favouring the use of national carriers, cumbersome procedures or personal harassment during port calls, abusive tariffs for services (some of which are not even rendered) and unrealistic and unjustifiable liability claims by customs agents.[13]

On the other side, this is an especially sensitive sector for some members. Just as many developing countries had cited security concerns when they opposed negotiations on communications services in the 1980s, the United States objected on grounds of national security to concessions on maritime transportation services. This followed a long tradition of treating maritime services as a special sector, reaching at least as far back as Adam Smith's contention that because "defence … is of much more importance than opulence, the Act of Navigation is, perhaps, the wisest of all the commercial regulations of England" (1776: 464-465). The restrictions that the United States imposes on maritime transportation, especially the reservation of cabotage (coastwise shipping) to domestic ships, descend from that very law. As was noted in Chapter 2, the United States secured a special exemption for its cabotage laws in GATT 1994. A provision in Paragraph 3 of that agreement covers certain measures that prohibit "the use, sale or lease of foreign-built or foreign-reconstructed vessels in commercial applications between points in national waters or the waters of an exclusive economic zone." The exemption is subject to review and even potential retaliation through "mirror" legislation.[14] The US negotiator who secured this special treatment would later call it "the ugly birthmark on the new-born baby" (Stoler, 2003: 1), and other countries that attended that birth have subsequently tried to have it removed or, failing that, to secure greater commitments in this sector from the United States and other members.

One halting step in that direction began with approval of the Decision on Negotiations on Maritime Transport Services at the end of the Uruguay Round. This decision established a Negotiating Group on Maritime Transport Services, with its first negotiating session to be held in May 1994, and a goal of concluding negotiations no later than June 1996. Those negotiations failed to reach agreement on a package of commitments by the agreed deadline, and the talks were suspended in July 1996 until a new round of comprehensive negotiations on trade in services was mandated to begin in 2000. Like the rest of the services negotiations, it then became a part of the Doha Round.

Despite the best efforts of the *demandeurs*, the maritime services negotiations in the Doha Round have not gone any further than did those attempted in the period of the built-in agenda. More than 50 members issued a Joint Statement on the Negotiations on Maritime Transport

Services on 3 March 2003 (WTO document TN/S/W/11).[15] It called for meaningful liberalization and a broad coverage of this sector in the negotiations and in the WTO/GATS framework. After the Hong Kong Ministerial Conference in 2005, the *demandeurs* recommended the use of a "maritime model schedule."[16] This model proposed the elimination of cargo reservation and restrictions on foreign equity participation, plus the right to establish a commercial presence both for international freight transport and for maritime auxiliary services. It also called for additional commitments on access to/use of port services and multimodal transport services as well as for the elimination of MFN exemptions. The model requested commitments on international freight transport (CPC 7212) – significantly not including cabotage – in Modes 1, 2, and 3, including elimination of cargo reservations, restrictions on foreign equity, restrictions on the right to establish a commercial presence, nationality requirements of board members and any other preferential treatment.

The Information Technology Agreement

The ITA eliminated tariffs on a wide range of information and communication technology products, including computers and computer peripherals, telecommunications equipment, semiconductors, software, photocopiers, fax machines, cash registers, calculators, scientific and measuring devices, loudspeakers and digital cameras, among others. The agreement eliminated all duties that ITA signatories imposed on these products by 2000, with some exceptions allowed for developing countries through 2005. It is arguably the most significant accomplishment of the period between the rounds,[17] and rivals or exceeds many of the achievements of the Uruguay Round or agreements that might potentially be reached in the Doha Round. WTO data show that in 2011, global exports of office and telecommunications equipment amounted to 9.4 per cent of world merchandise trade, or slightly more than agricultural trade (9.3 per cent) and significantly greater than the value of textile and apparel trade (3.9 per cent).[18]

The agreement did not originally develop within the WTO, having instead been initiated among US computer manufacturers in the Information Technology Industry Council (ITI) and then progressing through a series of other private and public institutions. Frustrated by the failure to eliminate tariffs in the Uruguay Round, in 1995 the ITI developed a "Proposal for Tariff Elimination" that called for a plurilateral Information Technology Agreement to eliminate tariffs on hardware and software by the year 2000. The ITI then worked with the Information Technology Association of Canada, the European Association of Manufacturers of Business Machines and Information Technology Industry and the Japanese Electronic Industry Development Association, calling on the Group of Seven (G7) governments to remove all barriers to trade and investment in this sector. The next step came in the endorsement by EC and US business groups in the TransAtlantic Business Dialogue.

While the initiative thus moved rapidly in the private sector, governments were slower to act. According to the WTO's history of the initiative, at this stage:

> The US Administration was initially reluctant about the proposal because it did not want to antagonize the European Union after it had refused to join a sectoral initiative on electronics only a few years earlier. Industry successfully lobbied, and by the beginning of April 1995, the US Trade Representative, Mr Mickey Kantor, announced that the Clinton Administration would pursue the negotiation of an information technology agreement. By 1995, both the governments of Canada and the US firmly supported the idea of negotiating an ITA. However, the initiative was initially resisted by the European Union and Japan, which considered that the results of the Uruguay Round were "big enough to digest" (WTO, 2012: 11).

European reluctance was overcome by year's end, with the European Community and the United States formally endorsing the initiative at a summit on 3 December 1995 between President Jacques Santer of the European Commission, Spanish Prime Minister Felipe González and US President Bill Clinton.

There then followed a shifting series of negotiations that were at least partly within the WTO, with the negotiating parties treating the December 1996 Singapore Ministerial Conference as an action-forcing event that provided them with a useful deadline. Talks also took place in various bilateral, trilateral and other configurations. Among the sticking points that negotiators had to deal with were the scope of product coverage, the question of whether the agreement would go beyond tariffs to cover non-tariff barriers and the relationship between the proposed agreement and a US–Japanese semiconductor agreement that was due to expire in mid-1996.

Even while the negotiators for the Quad (Canada, the European Union, Japan and the United States) debated principles and haggled over product lists, they also agreed that the negotiations needed to include a broader range of countries if they were to achieve the needed level of "critical mass". This could best be done, they decided, by bringing the initiative to the Asia-Pacific Economic Cooperation (APEC) forum. APEC had the virtue of including some economies that were not yet in the WTO, most notably China and Chinese Taipei, as well as other major players such as the Republic of Korea and Hong Kong, China. This expansion in the talks naturally required that the agreement address the needs of developing countries. Some APEC members nonetheless remained sceptical, and "[o]nly after the personal intervention of various political leaders, such as US President Bill Clinton and Japanese Prime Minister Ryutaro Hashimoto, did APEC decisively endorse the ITA" (*Ibid*.: 15). The APEC Leaders' Declaration of 25 November 1996 called for the conclusion of the ITA by the Singapore Ministerial Conference (due to convene two weeks later) and endorsed the elimination of tariffs by the year 2000.

The negotiations did pivot on the Singapore ministerial, as the negotiators had intended, but did not end there. The Ministerial Declaration on Trade in Information Technology Products that 29 countries signed in Singapore was a near-final draft of an agreement, and a mandate to conclude it, rather than the finished product. Its entry into force was contingent on the ITA

members accounting for 90 per cent of world trade in information technology products by 1 April 1997; the original signatories' coverage was only 83 per cent. The ministerial declaration laid out modalities for the final stages of the negotiations and a timetable to achieve them. In the next several months, they worked both to resolve the final questions of product coverage and to bring the requisite number of other parties on board. It was clear by March 1997 that a sufficiently large number of additional countries had signed on, and the participants then commenced a schedule of phased duty reductions on an MFN basis. As shown in Table 10.2, the original signatories included 23 developed countries (most of them EC members) and six developing economies. In later years, another 14 developed countries signed on (primarily as a consequence of accessions to the European Union), as did 32 more developing and transitional economies.

The average bound tariff rates that developed countries imposed on ITA products prior to this agreement were 4.9 per cent. Some developing-country signatories started from much more substantial bindings, notably Turkey (24.9 per cent), Thailand (30.9 per cent), and India (66.4 per cent). Applied tariffs were generally lower, but for several of the developing countries they were still above 20 per cent to 30 per cent before the ITA.[19] One study found that from 1996 to 2008, total ITA products trade (imports and exports) expanded by 10.1 per cent annually, rising from US$ 1.2 trillion to US$ 4.0 trillion; during that same period, global trade in all manufactures increased at 7.1 per cent (US International Trade Commission, 2010: 9). It is nonetheless difficult to determine what share of the above-average rate of growth might be attributable to trade liberalization and what share might simply represent increased demand.

Table 10.2. Signatories to the Information Technology Agreement

	Developed	Developing and transitional economies
1996	Australia; Austria; Belgium; Canada; Denmark; Finland; France; Germany; Greece; Iceland; Ireland; Italy; Japan; Liechtenstein; Luxembourg; Netherlands; Norway; Portugal; Spain; Sweden; Switzerland; United Kingdom; United States	Chinese Taipei; Hong Kong, China; Indonesia; Republic of Korea; Singapore; Turkey
1997-2000	Croatia; Cyprus; Slovenia; Czech Republic; Estonia; Latvia; Lithuania; New Zealand; Poland; Romania; Slovakia	Albania; Costa Rica; El Salvador; Georgia; India; Israel; Jordan; Kyrgyz Republic; Macao, China; Malaysia; Mauritius; Oman; Panama; Philippines; Thailand
2001-2005	Bulgaria; Hungary; Malta	Kingdom of Bahrain; China; Egypt; Republic of Moldova; Morocco; Nicaragua
2006-2012	—	Colombia; Dominican Republic; Guatemala; Honduras; State of Kuwait; Peru; Russian Federation; Kingdom of Saudi Arabia; Ukraine; United Arab Emirates; Viet Nam

Source: WTO Secretariat, www.wto.org/english/tratop_e/inftec_e/itscheds_e.htm.

In a related area, WTO members also approved a "standstill" commitment in order to keep open electronic commerce. One of the few substantive accomplishments of the Geneva Ministerial Conference in 1998 was the adoption of a Declaration on Global Electronic Commerce[20] providing for "a comprehensive work programme to examine all trade-related issues relating to global electronic commerce" and also "declar[ing] that Members will continue their current practice of not imposing customs duties on electronic transmissions." In Paragraph 34 of the Doha declaration ministers agreed to "maintain their current practice of not imposing customs duties on electronic transmissions until the Fifth Session," and "to continue the Work Programme on Electronic Commerce" while also instructing the General Council "to consider the most appropriate institutional arrangements for handling the Work Programme, and to report on further progress to the Fifth Session of the Ministerial Conference." This commitment was subsequently reconfirmed in later ministerials, including the Geneva Ministerial Conference in 2011. There, ministers adopted a decision by which members "will maintain the current practice of not imposing customs duties on electronic transmissions until" the 2013 Ministerial Conference.[21]

Demandeurs have sought to expand the coverage of the ITA, both in its membership and in its product coverage, ever since the original agreement entered into effect. This included an attempt to make an ITA-2 part of an "early harvest" at the Seattle Ministerial Conference, but those efforts failed with the rest of that conference. In 2012, the United States proposed new negotiations, submitting a concept paper on behalf of itself as well as Canada, Japan, the Republic of Korea, Singapore and Chinese Taipei. This group was later joined by Costa Rica and Malaysia. The concept paper urged that ITA participants "accelerate consultations with domestic stakeholders to grasp their needs for the expansion of the product coverage." The types of goods that they urged be covered by the ITA include products capable of processing digital signals, products that can send or receive digital signals with or without line, manufacturing equipment, and related components, attachments and parts. The paper also urged that the ITA Committee "take concrete steps to advance the important ongoing work under the Non-Tariff Measures (NTMs) Work Programme, to further facilitate international trade in this important sector."[22] At the time of writing, the negotiations are still under way. Twenty-two members had submitted product lists in this new round of ITA negotiations by early 2013.[23]

Implementation issues

"Implementation" is yet another of the words used in the WTO that have different meanings to different users, although in this instance it is not one term applied to multiple phenomena but differing perspectives that users have on the same phenomenon. To many developing countries, the Uruguay Round agreements placed new strains on governments by restricting their policy space and requiring that they meet new substantive and procedural obligations. Much of their worries centred on trade-related aspects of intellectual property rights (TRIPS) and textiles agreements, but they also had concerns over the agreements on subsidies, agriculture, sanitary and phytosanitary measures, anti-dumping and trade-related investment measures (TRIMs). These pacts did not adequately reflect developing countries' interests, they argued, and hence had to be re-balanced. Nor was the problem limited to the Uruguay

Round agreements *per se*, as the single undertaking in those negotiations had also required developing countries to adopt some agreements from the Tokyo Round. They were thus retroactively subject to rules that they had no hand in writing, and that therefore were not crafted in ways that addressed the special needs of developing countries. These burdens of one round upon another made implementation of their obligations difficult, and required some combination of technical assistance or revision of the requirements. While policy-makers in developing countries presented these as legitimate concerns that required urgent attention, their counterparts in some developed countries saw the demands on implementation as a disingenuous effort to prevent further liberalization in a new round, or even to undo what had been achieved in the last one. Some of them interpreted "implementation" to mean "revision".

When ministers met at the Geneva Ministerial Conference in 1998, they agreed that implementation must be an important part of future work at the WTO, taking note of "the problems encountered in implementation and the consequent impact on the trade and development prospects of Members." In Paragraph 8 of the Ministerial Declaration they committed to "pursue our evaluation of the implementation of individual agreements and the realization of their objectives" when they met the next year in Seattle, while also reaffirming – as developed members insisted – their "commitment to respect the existing schedules for reviews, negotiations and other work to which we have already agreed."

Prior to the Seattle Ministerial Conference, a group of developing countries presented the General Council a list of some 150 elements for consideration on the implementation agenda. The eight pages of elements included issues to be decided before Seattle, as well as issues to be agreed within one year of the conference. The general mayhem at Seattle prevented further progress on this initiative, but in Geneva ambassadors revived the discussions on implementation. On 8 May 2000, the General Council created the Implementation Review Mechanism (IRM), including special sessions of the General Council meeting exclusively on this question. Following special sessions of the IRM in June, July and October, the General Council adopted a decision on implementation measures on 15 December 2000.[24] Its main features may be paraphrased as follows:

- Members were to ensure that their tariff-rate quota regimes are administered in a transparent, equitable and non-discriminatory manner;
- The Committee on Agriculture was to examine possible means of improving the effectiveness of the implementation of the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries;
- The relevant international standard-setting organizations were urged to ensure the participation of members at different levels of development and from all geographic regions, throughout all phases of standard development;
- The Customs Valuation Committee was encouraged to continue its examination and approval of requests from Members for extension of the five-year delay period of the Agreement on the Implementation of Article VII of GATT 1994;

- Members were to expedite the remaining work on the harmonization of non-preferential rules of origin;
- The Director-General was asked to take appropriate steps to include Honduras in Annex VII(b) to the Agreement on Subsidies and Countervailing Measures;
- The Committee on Subsidies and Countervailing Measures to examine all issues relating to Articles 27.5 and 27.6 of the SCM Agreement (i.e. those provisions relating to the phase-out of export subsidies by developing countries that have achieved competitiveness), including the possibility to establish export competitiveness on the basis of a period longer than two years;
- The SCM Committee was to examine the issues of aggregate and generalized rates of remission of import duties and of the definition of "inputs consumed in the production process", taking into account the particular needs of developing-country members.

Many other implementation issues of concern to developing countries remained unsettled, so ministers agreed on a two-track approach. Those issues for which there was an agreed negotiating mandate in the declaration would be dealt with under the terms of that mandate, but those implementation issues where there was no mandate to negotiate would be taken up as "a matter of priority" by relevant WTO councils and committees. Ministers also directed that "all special and differential treatment provisions shall be reviewed with a view to strengthening them and making them more precise, effective and operational." Additional special sessions of the General Council devoted to implementation took place on 27 April 2001 and 3 October 2001. The October session was set to reach agreement on a roster of issues laid out by General Council Chairman Stuart Harbinson. Informal heads of delegation meetings revealed that members could not agree on that roster, however, so the formal special session was suspended after only a few minutes. This signalled that the implementation debate had gone as far as the ambassadors could take it without "kicking it upstairs" for a ministerial decision. From that point forward the implementation agenda became a part of the Doha Round, as discussed in Chapter 12.

TRIPS and public health

More than any other topic taken up in the Uruguay Round, the relationship between the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) and public health, also known as the right to medicine, provoked buyer's remorse on the part of many WTO members. At issue here is the question of enforcing patent rights for pharmaceuticals, especially those used to treat deadly diseases and to prolong life. The debate is sometimes portrayed as a struggle between the economic interests of pharmaceutical companies and the human rights of people stricken with life-threatening diseases, or "profits versus people", and seen in that light the rules of the WTO – which are in turn derived from those of the World Intellectual Property Organization (WIPO) – became one of the rallying cries for anti-globalization advocates. The arguments can be reduced to a few harsh words that easily fit on a bumper sticker or a handheld banner, but a closer examination of the issues reveals a more nuanced debate that is rooted in different conceptions of how to promote the development and dissemination of medicines. That debate is conducted as much within countries as it is between them.

The political economy of pharmaceutical patents

The essential problem is easily stated but not so simply resolved. For centuries, the competing needs to develop and disseminate new inventions have been balanced by a system that rewards inventors with a temporary monopoly, after which the innovation is in the public domain. In the pre-TRIPS era, for pharmaceuticals that usually meant a 15 to 20 year period during which the developer enjoyed a monopoly, but once that expired the drugs may be produced and sold generically. TRIPS made the term of patents 20 years from the date of patent application. Some argue that the strict enforcement of pharmaceutical patents will result in higher prices for drugs throughout the period of the legal monopoly, to the point where these drugs may be priced out of the reach of some individuals and national health services. Conversely, failure to enforce pharmaceutical patents may prevent the development of new drugs altogether. Patents "added the fuel of interest to the fire of genius," as Abraham Lincoln is often quoted, and nowhere is that fuel more necessary than in pharmaceutical research. The development and testing of new drugs is a supremely expensive, time-consuming and risky undertaking, and it would likely come to a halt if pharmaceutical companies were denied the revenue stream from existing drugs as well as the promise of temporary monopoly rents for future drugs. Many economic studies show that the pharmaceutical sector is particularly dependent on patents for appropriating returns from research and development (see, for example, Cockburn, 2009).

The logic of patents can be harder to defend in the face of a public health crisis, especially when there are few efficacious drugs and these remain within the patent term. That can lead to calls for the breaking or easing of patents, among other proposed solutions (e.g. government subsidies or price controls). The domestic politics of this issue can undo the usual pattern by which consumers tend to be less involved than producers in debates over public policy. For reasons discussed in Chapter 1, small numbers of producers with intense interests usually find it easier to band together and lobby the government than do the large number of consumers with diffuse interests. When the stakes involve not just prices but lives, however, the communities that represent (for example) people living with HIV/AIDS are in an entirely different position than consumers who cannot be bothered to canvass against sugar import quotas.

The missing advocates in this instance were the potential consumers of future drugs, and here the dynamics were comparable to that of trade liberalization. Debates over trade policy sometimes pit well-organized groups that favour the status quo against less organized groups, or even groups that have yet to exist, that would favour change. When governments propose to remove trade barriers the objections that they hear from the industries that are currently protected by those barriers may be louder than the support they get from actual or potential export-oriented industries that may not yet be aware of the new opportunities they could enjoy in an enlarged market. Similarly, when patent protection is at issue, the communities of people who seek greater access now to existing drugs may be more visible and vocal than the people who may suffer in the future from diseases that they have not yet contracted, and could benefit from drugs that have not yet been developed. The public interest groups that get involved in the TRIPS and public health debates usually place greater emphasis on the need to disseminate existing drugs than on the need to develop new drugs. To the extent that they deal with the latter

issue, they are more likely to call for increased levels of government-funded research than to incentivize pharmaceutical companies through the strict enforcement of patents.

These differing interests are represented within the WTO by member states that fall into three principal groups. One consists of those industrialized countries with leading-edge pharmaceutical industries that rely on strict enforcement of patents to retain and profit from that edge. The United States is the most active member in this group, which also includes Japan, some EU member states and Switzerland. Where those countries tend to represent producer interests, developing countries in Africa and elsewhere represent consumer interests. Health care is very expensive in poor countries that have high rates of infection for diseases such as HIV/AIDS and tuberculosis, and the strict enforcement of pharmaceutical patents has heavy consequences for public health and government budgets. Yet a third group consists of those developing countries that have the technological capacity to produce generic versions of pharmaceuticals, especially Brazil, China and India. A relaxation of the rules affecting pharmaceutical patents would aid these countries in two ways, both by reducing their own health-care costs and by expanding the market for their pharmaceutical companies' exports. Their preferred solution is through compulsory licensing, a practice by which the owner of a patent is required by law to license the use of their rights to another producer or seller. A compulsory licence can be obtained without seeking the rights holder's consent, and the right holder is paid on terms that are set by law or determined through arbitration rather than by negotiation between a buyer and a willing seller.

The Dispute Settlement Body was the principal forum in which these competing interests played out in the early years of the WTO, where the United States brought complaints against both India and Pakistan in 1996. The case of *Pakistan – Patent Protection for Pharmaceutical and Agricultural Chemical Products* was settled "out of court" in a mutually agreed solution that the parties reached in 1997, but the case of *India – Patent Protection for Pharmaceutical and Agricultural Chemical Products* led to rulings against India by both the panel and the Appellate Body and, in 1999 the enactment of new legislation to bring Indian practice into conformity with these rulings.

The WTO Secretariat also studied the issue and held a workshop in cooperation with the World Health Organization in April 2001. The participants "clearly approached the issues from different points of view," said Adrian Otten (see Biographical Appendix, p. 588), director of the WTO Intellectual Property Division, but there was also recognition that "differential pricing could play an important role in ensuring access to existing drugs at affordable prices … while the patent system would be allowed to continue to play its role in providing incentives for research and development into new drugs."[25]

The Declaration on the TRIPS Agreement and Public Health

The issue moved thereafter from dispute settlement to negotiations, with developing countries seeking adjustments to the terms of the TRIPS Agreement as it affects pharmaceutical patents. Their principal objective, which would serve the interests both of

those developing countries that have the capacity to produce pharmaceuticals as well as those with public health crises, was to modify the TRIPS rules to allow more compulsory licensing. The United States and other industrialized countries with major pharmaceutical industries opposed these efforts, and had attempted in the months preceding the ministerial to break up the developing country coalition that proposed these changes. Odell and Sell (2006a: 103) noted that this coalition "faced, and effectively resisted, efforts to divide and conquer" in which the United States tried to tempt some of the coalition's members with side payments:

> In the fall USTR Zoellick made two lesser offers to subgroups presumably in the hope of splitting the coalition and burying their proposal. He offered to extend TRIPS transition periods for pharmaceutical products until 2016 for least developed countries. This would have practical and legal benefits for those countries but would do nothing to increase supplies of medicines where they were lacking. And it would not apply to Brazil, India, or eighteen African countries including the largest and most active in the WTO. Second, Zoellick offered to observe a moratorium on TRIPS dispute actions against all sub-Saharan African countries for measures they took to address AIDS.

While this offer may have held some attraction for African countries, it did not achieve the intended result, as none of these countries' ambassadors in Geneva broke ranks with the coalition.

By the time the Doha Ministerial Conference met in November 2001, the memberships and positions of the contending sides had hardened, with two different options being proposed for the ministerial declaration. The language preferred by the developing countries was known as Option 1. It would ease the obligations under the TRIPS Agreement in the following terms:

> Nothing in the TRIPS agreement shall prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we reaffirm that the agreement shall be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to secure access to medicines for all.

These terms stressed the exceptions rather than the disciplines of the TRIPS Agreement, but the pharmaceutical industries of the developed countries preferred the reverse emphasis. They supported Option 2, which read:

> We affirm a member's ability to use, to the full, the provisions in the TRIPS Agreement which provide flexibility to address public health crises such as HIV/AIDS and other pandemics, and to that end, that a member is able to take measures necessary to address these public health crises, in particular to secure affordable access to medicines. Further, we agree that this declaration does not add or diminish the rights and obligations of members provided in the TRIPS agreement.

At Doha, the facilitator for TRIPS consultations was the Mexican Trade Minister Luis Ernesto Derbez. The way that Mexico's WTO ambassador, Eduardo Pérez Motta, and, through him, Mr Derbez came to have leading roles in this issue illustrates how mid-sized countries often come to have important parts in WTO deliberations. This was not a responsibility that Mexican officials had actively sought, their country not falling squarely into any one of the three camps, but that is precisely why Mexico was seen as an "honest broker" on the subject that could help to bridge the gaps between the contending countries. Secretariat officials approached Mr Pérez Motta shortly before the Doha Ministerial Conference was to start, asking him to see whether the minister would be willing to take on the task. An apparently last-minute request of that sort might seem to the uninitiated like bad planning, but there is an underlying reason for this approach: because this request was made only a few days before the ministerial, there was no time left for the minister to be "captured" by the proponents of any position.

The key to these negotiations, as well as the subsequent development of the agreement that ministers mandated at Doha, was that the United States was committed to launching a new round. Taken by itself, the TRIPS and public health issue was a loser for Washington: almost any conceivable change in the existing terms of the TRIPS Agreement would prejudice the interests of the US pharmaceutical industry. The strategy that Mr Zoellick pursued in Doha, however, was based on giving every other member of the WTO a stake in the round, and – as discussed in Chapter 11 – he succeeded with everyone other than India. Doing so required that he make a series of strategic retreats, and this was one of them. By moving in the direction of Option 1 at Doha, and later by easing US opposition to the terms of the agreement that this mandate produced, he helped to achieve the larger goal of launching the round and keeping it alive.

The breakthrough in the Declaration on TRIPs and Public Health came when delegates agreed on a new paragraph 4 reflecting developing countries' interests. Brokered by Brazil and the United States, the text is reproduced in Box 10.1. The language that they drafted for this paragraph was an amalgamation of options 1 and 2, but borrowed more from the former than from the latter.

The approval of this declaration was only an interim solution, as it provided in paragraph 6 for the negotiation of an expeditious solution to the problems arising from countries' "difficulties in making effective use of compulsory licensing." The membership once again turned to Mexican diplomats to help find the solution. Mr Pérez Motta did not know at the time of the ministerial that he would be made the chairman of the TRIPS Council the next year, with a mandate to conclude the negotiations on this issue within one year. He devoted most of his time to this problem in 2002, engaged in a bottom-up process that involved ambassadors more than ministers. It also required him to fend off efforts that Washington made to influence the negotiations by way of Mexico City. That aspect of the process is described in Chapter 14, where we take up the role of chairmen in WTO negotiations.

Box 10.1. Declaration on the TRIPS Agreement and Public Health

Excerpt from WTO document WT/MIN(01)/DEC/2, 20 November 2001.

4. We agree that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all.

In this connection, we reaffirm the right of WTO members to use, to the full, the provisions in the TRIPS Agreement, which provide flexibility for this purpose.

5. Accordingly and in the light of paragraph 4 above, while maintaining our commitments in the TRIPS Agreement, we recognize that these flexibilities include:

a. In applying the customary rules of interpretation of public international law, each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular, in its objectives and principles.
b. Each member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted.
c. Each member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency.
d. The effect of the provisions in the TRIPS Agreement that are relevant to the exhaustion of intellectual property rights is to leave each member free to establish its own regime for such exhaustion without challenge, subject to the MFN and national treatment provisions of Articles 3 and 4.

6. We recognize that WTO members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002.

The negotiations Mr Pérez Motta led ultimately produced the Decision on Implementation of Paragraph 6 of the Doha Declaration on the TRIPS Agreement and Public Health, as adopted by the General Council on 30 August 2003. This agreement clarified the rules affecting the compulsory licensing for the export of pharmaceuticals. Paragraph 2 of the decision (WTO document WT/L/540) provided that when terms set out in the decision are met:

> The obligations of an exporting Member under Article 31(f) of the TRIPS Agreement shall be waived with respect to the grant by it of a compulsory licence to the extent necessary for the purposes of production of a pharmaceutical product(s) and its export to an eligible importing Member(s).

Those terms required (among other things) that the eligible importing member notify the TRIPS Council providing the information required to establish eligibility for this waiver, and the exporting member notify the conditions set for the compulsory licences. The decision also provided for a waiver to importing countries on the TRIPS requirement to pay adequate remuneration for compulsory licences, and added a requirement that eligible importing members to "take reasonable measures within their means … to prevent re-exportation of the products that have actually been imported into their territories under the system," and largely reiterated TRIPS language on the promotion of transfer of technology and capacity-building.

The waiver for this agreement is not intended to provide a permanent solution, which is instead intended to come via amendment to the TRIPS Agreement. On 6 December 2005, WTO members approved changes that would make these changes permanent, but the amendment will not be formally built into the TRIPS Agreement until two thirds of the members have accepted the change. Even then the amendment will take effect only for those members that accept it; the waiver will continue to apply for each of the remaining members until they accept the amendment and it takes effect. Members originally set themselves the deadline of 1 December 2007 to reach the two-thirds level; that deadline was later extended to 31 December 2009 and then to 31 December 2013. As of early 2013, just 72 members had adopted the amendment,[26] constituting less than half of the total membership.

These results appear to have brought peace to the issue. It is notable that, despite the high-profile character of TRIPS and public health, there were no further dispute settlement cases filed in the WTO involving pharmaceutical patents after 2001. The terms of the deals reached at and after Doha received a somewhat mixed reception from public health advocates. NGOs such as Médecins Sans Frontières (MSF) were satisfied with the balance struck in this agreement; a 2003 MSF study argues that "[e]ach country must be able to design and operate its patent system in its own best national interest, using the flexibilities of the TRIPS Agreement" (Boulet et al., 2003: 24). The principal concerns they expressed were not with the status quo in WTO law, but instead with further modifications that were then under consideration in WIPO. Noting that "in many countries, patents hamper the public's access to life-saving medicines," such that "profits are being put before public health," the study observes that "[t]his trend may be worsened by WIPO's ongoing negotiations aiming at developing a 'Substantive Patent Law Treaty', a global treaty that is very likely to be based on patent standards used in wealthy countries" (*Ibid.*). That treaty remained under negotiation for another two years in WIPO, but negotiations were eventually suspended in 2006 when it was clear that countries' differences would not be overcome.[27] Other voices in the public health community took a more cautious approach to interpreting the results of the WTO negotiations. "[T]he Doha Declaration and Paragraph 6 decision have not resolved the problem of access to affordable medicines," according to Kerry and Lee (2003), who called for "a simplification of their content, to enable actual implementation" and urge that "public health protections under TRIPS must be recognised as taking precedent over measures subsequently adopted under other trade agreements."

Revision of the Government Procurement Agreement

The issue of government procurement has a much longer tenure than most of the others reviewed here, having been gradually yet incompletely integrated into the GATT system over the half-century that preceded the creation of the WTO. The one constant has been the plurilateral character of the agreement, making it more of a holdover from the pre-Uruguay Round GATT practices than part of the single undertaking of the WTO period. The European Union had hoped to change that in the Doha Round, pressing this as one of the Singapore issues that would become part of the single undertaking in that round, but (as discussed in Chapter 12) that effort failed. Although it has undergone numerous changes, including refinements in its rules and expansions in its membership, the Government Procurement Agreement (GPA) remains an instrument whose burdens and benefits are restricted to those members.

Government procurement might appear on its surface to be simply about opportunities to make sales, but it has a much greater significance. When governments make commitments on their procurement procedures they are also dealing with issues of governance, preferences for domestic suppliers in general and disadvantaged communities in particular, and even corruption. In that sense, the decades-long efforts to bring procurement rules within the disciplines of the multilateral trading system might be seen as one of the earliest debates over the relationship between trade, transparency, governance and social issues.

Like many other issues that eventually reached fruition in the Uruguay Round, government procurement had been on the table as far back as the US proposals to the Havana Conference in 1946.[28] The proposed Article 8 (MFN treatment) and Article 9 (national treatment) in the US draft for the ITO charter covered, respectively, "the awarding by Members of governmental contracts for public works" and "laws and regulations governing the procurement by governmental agencies of supplies for public use other than by or for the military establishment." This is among the areas where the final draft of the Havana Charter was less ambitious than the opening US position, with representatives of other governments (particularly the United Kingdom) having raised objections. Government procurement was not explicitly covered in the provisions of the draft establishing MFN treatment (Article 16) or national treatment. To the contrary, the national treatment provision (Article 18) explicitly stated that its disciplines did "not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes." The closest that the Havana Charter came to bringing government procurement into the disciplines of the proposed trade regime was a passage in the provisions on state trading (Article 29) that rather vaguely required "fair and equitable treatment" for "imports of products purchased for governmental purposes." This ITO Charter, as discussed in Chapter 2, survived the international negotiations but not the domestic politics of the United States.

The very limited provisions on government procurement in GATT 1947 followed the pattern set in the Havana Charter. Article III (national treatment) explicitly states in paragraph 8(a) that:

> The provisions of this Article shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.

Similarly, the provisions on state-trading enterprises in Article XVII.2 stated that the disciplines of this article "shall not apply to imports of products for immediate or ultimate consumption in governmental use and not otherwise for resale or use in the production of goods for sale." The closest that GATT 1947 came to liberalizing government procurement practices was a repetition in Article XVII.2 of the Havana Charter formula, providing once more that "each contracting party shall accord to the trade of the other contracting parties fair and equitable treatment" with respect to imports of goods for governmental use.

While Washington had earlier been the *demandeur* and London the original sceptic, by 1962 the tables had turned. After the United States increased the level of national preference in defence procurement from 6 per cent to 50 per cent, it was the United Kingdom (together with Belgium) that raised objections, bringing its complaint to what was still the post-war Organisation on European Economic Co-operation (OEEC). The next year, after the OEEC had been transformed into the Organisation for Economic Co-operation and Development (OECD), the reborn institution began to undertake analytical work in this field. Its original aim was to reconcile the differing practices of the United States and what was then still the European Economic Community, at a time when the latter bloc was beginning to open up government procurement practices among its member states. The OECD's analysis was slowed by the many differences not just in the practice but the very terminology of procurement. Progress had nonetheless gone far enough by the late 1960s for the United States once again to propose a formal agreement on government procurement. Negotiations proceeded in the OECD through the mid-1970s, leading to a draft OECD instrument, but the talks bogged down over the details. The inability of the OECD countries to resolve their differences, coupled with the expressed interests of some developing countries that saw prospects for increased exports, led to the transfer of these talks from the OECD to the Tokyo Round in mid-1976. To a considerable degree, the GPA produced in those GATT negotiations was based on the incomplete OECD Draft Instrument on Government Purchasing Policies, Procedures and Practices. In the end, it was largely an OECD agreement, in practice if not in form, as most OECD members signed on to it but few other GATT contracting parties followed.

The GPA has been in a frequent state of evolution since the Tokyo Round. The evolution has sometimes taken place during rounds but not within them. The GATT contracting parties amended the GPA in 1986, expanding its coverage to include not just outright purchase but all forms of procurement (e.g. leasing and rental), lowering the threshold value, strengthening the rules of non-discrimination and enhancing the disciplines on tendering procedures. Negotiations over more serious reforms were initiated that same year, although technically they were not a part of the concurrent Uruguay Round. That is a distinction of more than procedural importance, because if the new GPA negotiations were organically a

part of the round that would have brought the results within the scope of the single undertaking and thus ended the status of the GPA as a plurilateral agreement. These talks nonetheless proceeded apace with the rest of the round, and ultimately led to a new Agreement on Government Procurement that was signed at the Marrakesh Ministerial Conference in 1994 by the parties to the original agreement plus the Republic of Korea.[29] This new instrument is often mistaken for the earlier agreement, not least because it remains a plurilateral agreement, it began with largely the same group of signatories (see Table 10.3), and is commonly referred to by the same initials (GPA).

The new GPA entered into force at the start of 1996. It went beyond central government purchasing of goods to cover procurement of services (including public works and public utilities) and procurement by sub-central levels of government. The exact coverage for each member is determined by the national schedules of purchasing entities and of services that are attached to the Agreement. The GPA applies to contracts above certain thresholds, with central government purchases of goods and services being covered above 130,000 Special Drawing Rights (SDRs), around US$ 176,000 as of 1996. Thresholds are higher for sub-central government entities, (generally around 200,000 SDRs), utilities (around 400,000 SDRs) and construction contracts (generally 5 million SDRs).

Table 10.3. Parties to the Agreement on Government Procurement

	Original parties under the Tokyo Round GPA	New party upon the Uruguay Round GPA's entry into force	Members acceding to the GPA during 1997-2012	Members in the process of accession as of 2013
Developed	Austria* Canada European Communities and its member states Finland* Japan Norway Sweden* Switzerland United States	–	Bulgaria (2007)* Cyprus (2004)* Czech Rep. (2004)* Estonia (2004)* Hungary (2004)* Iceland (2001) Latvia (2004)* Lithuania (2004)* Malta (2004)* Poland (2004)* Romania (2007)* Slovak Rep. (2004)* Slovenia (2004)*	New Zealand
Developing	Israel	Korea, Rep. of	Armenia (2011) Hong Kong, China (2007) Singapore (1997) Chinese Taipei (2001)	Albania China Georgia Jordan Kyrgyz Rep. Moldova, Rep. of Oman Panama Ukraine

Source: WTO Secretariat, www.wto.org/english/tratop_e/gproc_e/memobs_e.htm.

Notes: *Country that later joined the European Union. All countries that were parties to the Tokyo Round GPA were also parties to the Uruguay Round GPA upon that agreement's entry into force.

Just as the GPA was revised concurrently with the Uruguay Round, the signatories to this plurilateral agreement also revised it in negotiations that ran parallel to the Doha Round. The United States had long pressed for reforms to the GPA, with the European Union and Japan resisting this initiative. Confidence in the integrity of government procurement decisions would be enhanced, according to the United States, if all WTO members agreed to basic standards of transparency and due process. The first steps in this direction came at the Singapore Ministerial Conference in 1996. Some developing countries expressed cautious support for this idea at the Ministerial Conference, with India promoting the limited aim of a procedural agreement providing for transparency and Suriname favouring a working group to study and develop guidelines for multilateral tendering rules. The Philippines called for an examination of whether there are net benefits to members who do not adhere to the GPA. Others that either opposed negotiations in this area or advocated exemptions included Indonesia, Papua New Guinea, Saint Kitts and Nevis, and the Southern African Development Community. The ministers compromised by establishing a working group on "government procurement practices, taking into account national policies." That qualifying language in the Singapore Ministerial Declaration regarding national policies met the Japanese concerns.

The inclusion of this topic among the Singapore issues meant not only the prospect for further reforms to the GPA but, more significantly, the extension of its disciplines to all WTO members by way of the single undertaking. That was not to be. As discussed in Chapter 12, this was one of the Singapore issues that were taken off the table in the aftermath of the Cancún Ministerial Conference.

In paragraph 26 of the Doha Declaration, the ministers provisionally agreed to negotiations that would "build on the progress made in the Working Group on Transparency in Government Procurement." The negotiations would be "be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers," and would also be complemented by "adequate technical assistance and support for capacity building both during the negotiations and after their conclusion." In a proviso that tracked the language on the other Singapore issues, however, the declaration specified that the negotiations were to take place after the next (i.e. Cancún) ministerial conference "on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations." The issue did not survive the debacle at Cancún, out of which only one of the Singapore issues – trade facilitation – would survive intact.

Director-General Supachai Panitchpakdi had hoped to bring government procurement into the Cancún package. He faced strong opposition from Malaysia, which has long used preferences in procurement to improve the economic standing of native Malays (McCrudden and Gross, 2006), and despite numerous attempts to win over Kuala Lumpur he was unable to convince them to lift their opposition. Mr Supachai believed in retrospect that the package could have been successful if government procurement could have been kept on the table, because if that were in the negotiations (together with trade facilitation), it would provide a good basis for launching a new round.[30]

While the issue was thus off the table in Doha it could still be addressed in talks that ran concurrently with, but quite apart from, the round. One way was through attracting new signatories. As can be seen in Table 10.3, four new members acceded to the agreement from 1997 to 2012, and another nine (including China) were in the process of accession. GPA signatories also fell back on the built-in agenda, with GPA Article V.14 having provided for a review of the agreement's operation. The review, which started in 1997, aimed for expansion of the agreement's coverage and the elimination of discriminatory measures and practices. Following negotiations that were conducted on and off after 1997, the Committee on Government Procurement adopted a revised GPA in March 2012. This was an essentially technical step following the final "legal scrub," as required by a decision at the Geneva Ministerial Conference in December 2011. The revised text incorporated new flexibilities for parties regarding procedural commitments, while also strengthening the role of the GPA as a tool of governance in the government procurement sector, and aims to ease the accession of developing countries.

The terms of the GPA have not been clarified by any significant dispute settlement cases. There had been just four such cases involving the GPA through 2012 (two of which involved the same issue), making this one of the least contentious of agreements within the WTO. All of these cases were brought from 1997 to 1999. In chronological order, they included an EC complaint regarding a Japanese procurement tender for the purchase a multi-functional satellite, joint EC and Japanese complaints against the United States regarding a Massachusetts state sanctions law aimed at Myanmar[31] and a US complaint concerning the procurement practices of the Korean Airport Construction Authority. The first case was settled out of court, the second was rendered moot when a Federal court in the United States struck down the state law on constitutional grounds, and the United States failed to prove its case against the Republic of Korea.

Endnotes

1 Note that while GATS Article XIX did refer to "rounds" it is clear from the context that these were meant to be rounds dealing specifically with services and not necessarily other topics (although neither was that possibility excluded).

2 This has been a point of perennial dispute in US law, with some members of Congress contending that any commitments made by the executive to other countries – whether or not existing law is in compliance with those commitments – are legitimate only if approved by Congress.

3 As enumerated in the Statement of Administrative Action that accompanied the law, these sectors are agricultural equipment, construction equipment, distilled spirits, electronics, furniture, medical equipment, non-ferrous metals, oilseeds and oilseed products, paper and paper products, pharmaceuticals, scientific equipment, steel, toys and wood products. The law further provides that the president must obtain advice from private-sector advisory committees and the US International Trade Commission before entering into agreements, and must report on the results to the congressional trade committees. Those committees have 60 days in which to raise any objections, but if they do not object during the lay-over period the agreements can go into effect without further action.

4 The members participating in the ISA negotiations, collective known as the "Real Good Friends of Services", are: Australia; Canada; Chile; Colombia; Costa Rica; the European Union; Hong Kong, China; Iceland; Israel; Japan; the Republic of Korea; Mexico; New Zealand; Norway; Pakistan; Panama; Peru; Switzerland; Chinese Taipei; Turkey; and the United States.

5 It should be noted that some negotiators and Secretariat officials involved in these talks take the position that they did not fail to conclude these aspects of the talks, but instead that they were not given sufficient time to do so.

6 Author's interview with Mr Harbinson on 24 January 2013.

7 These events are discussed in Key (2005).

8 The 29 include Brazil, but that member never ratified the commitments that it had signed.

9 The EU15 is counted as one member.

10 Submitted by Australia, Canada, Honduras, Hungary, India, Mauritius, Nicaragua, Pakistan, Peru, the Philippines, Senegal, Switzerland, Thailand, Turkey, the United States and the Bolivarian Republic of Venezuela.

11 The United States submitted a limited MFN exemption in insurance, applicable in cases of forced divestiture of US ownership in insurance service providers operating in WTO member countries.

12 See *Maritime Transport Services: Background Note by the Secretariat*, WTO document S/C/W/315, 7 June 2010, p. 39.

13 See *Maritime Transport Services: Background Note by the Secretariat*, WTO document S/C/W/62, 16 November 1998, p. 8.

14 One provision in that paragraph states: "A Member that considers that this exemption operates in such a manner as to justify a reciprocal and proportionate limitation on the use, sale, lease or repair of vessels constructed in the territory of the Member invoking the exemption shall be free to introduce such a limitation subject to prior notification to the Ministerial Conference."

15 The sponsors were: Australia; Canada; Chile; China; Croatia; Cyprus; the Czech Republic; the Dominican Republic; Estonia; the European Communities and their member states; The Gambia; Georgia; Guatemala; Hong Kong, China; Iceland; India; Japan; the Republic of Korea; the Kyrgyz Republic; Latvia; Lithuania; Malaysia; Malta; Mexico; New Zealand; Nigeria; Norway; Pakistan; Panama; Papua New Guinea; Peru; Poland; Romania; Singapore; Slovenia; Switzerland; and Chinese Taipei.

16 This plurilateral request is not published in any WTO document but is available online at http://commerce.nic.in/trade/Plurilateral%20Requests%20on%20Maritime%20Transport%20Services%20and%20Model%20Schedule.pdf.

17 It could alternatively be argued that the terms of China's accession to the WTO were as or even more significant than the ITA, but China's accession might also be considered to have been completed in the (very early) period of the Doha Round.

18 Data posted at www.wto.org/english/res_e/statis_e/its2012_e/section2_e/ii01.xls.

19 Data from US International Trade Commission (2010).

20 See *Declaration on Global Electronic Commerce*, WTO document WT/MIN(98)/DEC/2, 20 May 1998.

21 See *Work Programme on Electronic Commerce*, WTO document WT/L/843, 19 December 2011.

22 See *Concept Paper for the Expansion of the ITA: Communication from Canada, Japan, Korea, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Singapore and the United States*, WTO document G/IT/W/36, 2 May 2012, p. 2.

23 The members submitting lists included Australia; the Kingdom of Bahrain; Canada; China; Costa Rica; Croatia; the European Union; Hong Kong, China; Israel; Japan; the Republic of Korea; Malaysia; Mauritius; Montenegro; New Zealand; Norway; the Philippines; Singapore; Switzerland; Chinese Taipei; Thailand; and the United States.

24 See *General Council: Implementation-Related Issues and Concerns*, WTO document WT/L/384, 19 December 2000.

25 Quoted at www.wto.org/english/news_e/pres01_e/pr220_e.htm.

26 The members agreeing to the amendment included Albania; Argentina; Australia; the Kingdom of Bahrain; Bangladesh; Brazil; Cambodia; Canada; China; Colombia; Costa Rica; Croatia; Egypt; El Salvador; the European Union and its member states; Honduras; Hong Kong, China; India; Indonesia; Israel; Japan; Jordan; Macao, China; the former Yugoslav Republic of Macedonia; Mauritius; Mexico; Mongolia; Morocco; New Zealand; Nicaragua; Norway; Pakistan; Panama; the Philippines; the Republic of Korea; Rwanda; the Kingdom of Saudi Arabia; Senegal; Singapore; Switzerland; Chinese Taipei; Togo; Uganda; the United States; and Zambia.

27 See WIPO at www.wipo.int/patent-law/en/harmonization.htm.

28 For a more detailed examination of the negotiations on government procurement from 1946 through the Uruguay Round see Blank and Marceau (2006). The discussion in this section owes much to that analysis. See also Brown-Shafii (2011).

29 Hong Kong, China was the only other new economy that was expected to sign the new GPA in Marrakesh, but opted not to do so "in protest of the introduction of sectoral non-application provision[s] and reciprocity provisions in services by a number of participants" (Blank and Marceau, 2006: 45). It later acceded in 1997.

30 Author's interview with Mr Supachai on 27 September 2012.

31 The principal issue in this case was not government procurement *per se* but the larger question of whether the sanctions that one country imposes on trade and investment with another for political reasons can be applied in an extraterritorial fashion on the firms of another country.

Appendix 10.1. Elements of the built-in agenda

Year	Instrument	Objective	Results
1995	Decision on Financial Services	By mid-year, members were to improve, modify or withdraw all or part of their commitments in financial services, and finalize their positions relating to MFN exemptions in this sector	Financial services protocols were concluded in July 1995, and again in November 1997
	Decision on Negotiations on Movement of Natural Persons	By mid-year, members were to conclude negotiations "on further liberalization of movement of natural persons for the purpose of supplying services"	Negotiations concluded on 28 July 1995, with several members improving their commitments
1996	Decision on Negotiations on Basic Telecommunications	The final report of the Negotiating Group on Basic Telecommunications was due on 30 April 1996	Telecom Reference Paper was concluded April 1996; Basic Telecom Services Agreement was concluded April 1997
	Decision on Negotiations on Maritime Transport Services	Talks on "international shipping, auxiliary services and access to and use of port facilities, leading to the elimination of restrictions" were to end in June	Negotiations were suspended to 2000, later made part of the Doha Round
	Decision on Trade in Services and the Environment	Committee on Trade and Environment to report to the ministerial conference "on the relationship between services trade and the environment … [and] the relevance of inter-governmental agreements on the environment and their relationship to" GATS	The committee adopted its report on 8 November 1996 and forwarded it to the Singapore Ministerial Conference
1997	GATS Article XIII	Negotiations on government procurement of services were to begin no later the start of the year	Made a part of the Doha Round
	Decision on Notification Procedures Article III	A working group was to undertake a review of notification obligations and procedures and make recommendations to the Council for Trade in Goods within two years	The working group issued its report in October 1996
	Technical Barriers to Trade Agreement Article 15.4	Review of the operation and implementation of the agreement was to begin by the end of the year	The review was completed in November 1997
	Government Procurement Agreement Article XXIV.7(b)	By the end of the year negotiations were to begin to improve the agreement and achieve "the greatest possible extension of its coverage among all Parties on the basis of mutual reciprocity"	The Government Procurement Agreement was revised in 2012
	Preshipment Inspection Agreement Article 6	The Ministerial Conference was to review the provisions, implementation and operation of the agreement by the end of 1997	On 1 December 1997, a working party adopted recommendations to enhance implementation of the agreement
1998	GATS Article X	The results of negotiations on "emergency safeguard measures based on the principle of non-discrimination" were to enter into effect not later the start of the year	Made a part of the Doha Round
	Government Procurement Agreement Article V.14	A "major review" of the agreement was to begin by the start of the year, including examination of whether exclusions should be modified or extended	Negotiations were initiated; later made a tentative part of the Doha Round

Year	Instrument	Objective	Results
	Sanitary and Phytosanitary Agreement Article 12.7	Review of the operation and implementation of the agreement was to begin by the start of the year	The report on the review was adopted in March 1999
	Agreement on the Implementation of Article VI of GATT 1994, Article 17.6	Review of the provision on dispute settlement in the Anti-dumping Agreement was to begin by the start of the year "with a view to considering the question of whether it is capable of general application"	There appears to have been no follow-through on this item
	Rules of Origin Agreement Article 9.2(a)	A work programme on harmonization of rules of origin was to be "initiated as soon after the entry into force of the WTO Agreement as possible and will be completed within three years of initiation"	Work on harmonization of non-preferential rules of origin could not be completed by the deadline due to the complexity of issues
	Decision on the Application and Review of the Dispute Settlement Mechanism	By the end of the year, a review of the DSU was to be conducted, and ministers were to "take a decision … after the completion of the review, whether to continue, modify or terminate such dispute settlement rules and procedures"	Review's mandate expired without consensus; later made a part of the Doha Round and the Jara Process
1999	TRIPS Article 27.3(b)	Members were to review "the protection of plant varieties, either by patents or by an effective *sui generis* system or by any combination thereof"	Doha Declaration Paragraph 19 expanded the review to include the UN Convention on Biological Diversity and the protection of traditional knowledge and folklore
	TRIMs Agreement Article 9	Review of the operation of the agreement and consideration of whether it should be complemented with provisions on investment policy and competition policy was to begin by the end of the year	The Singapore Ministerial Conference established a working group on trade and investment "having regard to the … built-in agenda"
2000	Agreement on Agriculture Article 20	New negotiations were to begin at the start of year in pursuit of the "long-term objective of substantial progressive reductions in support and protection resulting in fundamental reform"	Made a part of the Doha Round
	GATS Article XIX	New negotiations were to begin by the start of the year "with a view to achieving a progressively higher level of liberalization"	Made a part of the Doha Round
	Trade Policy Review Mechanism Article F	An appraisal of the operation of the mechanism was to begin by the start of the year	The appraisal took place; no change was made
	Understanding on the Interpretation of Article XXVIII of GATT 1994	Tariff bindings: a review was to begin on the definition of "principal supplier" having negotiating rights under GATT Article XXVIII	The Council for Trade in Goods did not find grounds for changing the standards
	TRIPS Article 71	The first of two-yearly reviews of the implementation of the agreement was to begin at the start of the year	There appears to have been no follow-through on this item
	GATT 1994 Article 3	Ministerial conference to review the US exemption for its cabotage (coastwise shipping) laws	The issue is raised in each biennial Trade Policy Review of the United States

Year	Instrument	Objective	Results
No date	GATS Article VI.4	Services Council to develop any necessary disciplines relating to qualification requirements and procedures, technical standards, and licensing requirements	Made a part of the Doha Round
	GATS Article XV	Members to develop necessary multilateral disciplines to avoid the trade-distortive effects of service subsidies and also address the appropriateness of countervailing procedures	Made a part of the Doha Round
	TRIPS Articles 23 and 24	Negotiations on geographical indications for wines were to establish a multilateral system of notification and registration	Made a part of the Doha Round

Appendix 10.2. Members making commitments in sectors subject to post-Uruguay Round GATS negotiations

	Insurance and insurance-related services	Banking and other financial services	Telecommunication services	Maritime transport services
Albania	◆	◆	◆◆	◆
Angola		◆		
Antigua and Barbuda	◆		◆◆	◆
Argentina	◆	◆	◆◆	
Armenia	◆	◆	◆◆	
Australia	◆	◆	◆◆	◆
Austria	◆	◆	◆	
Bahrain, Kingdom of	◆	◆	◆	
Barbados	◆		◆◆	
Belize			◆◆	
Benin		◆		◆
Bolivia, Plurinational State of	◆	◆	◆	
Brazil	◆	◆		
Brunei Darussalam	◆	◆	◆◆	
Bulgaria	◆	◆	◆◆	
Cambodia	◆	◆	◆◆	◆
Canada	◆	◆	◆◆	◆
Cape Verde	◆	◆	◆◆	◆
Chile	◆	◆	◆◆	
China	◆	◆	◆◆	
Colombia	◆	◆	◆◆	◆
Costa Rica		◆	◆	
Côte d'Ivoire	◆	◆	◆◆	
Croatia	◆	◆	◆◆	◆
Cuba	◆	◆	◆	◆
Cyprus	◆	◆	◆◆	
Czech Republic	◆	◆	◆◆	
Djibouti			◆	
Dominica	◆		◆◆	
Dominican Republic	◆	◆	◆◆	
Ecuador	◆	◆	◆	
Egypt	◆	◆	◆◆	◆
El Salvador		◆	◆◆	
Estonia	◆	◆	◆◆	◆
European Union*	◆	◆	◆◆	◆
Finland	◆	◆	◆	◆
Gabon	◆	◆		
The Gambia	◆	◆	◆	◆
Georgia	◆	◆	◆◆	◆
Ghana	◆	◆	◆◆	◆

	Insurance and insurance-related services	Banking and other financial services	Telecommunication services	Maritime transport services
Grenada	◆		◆◆	
Guatemala	◆	◆	◆	
Guyana	◆	◆	◆	
Haiti	◆	◆		
Honduras	◆	◆	◆*	
Hong Kong, China	◆	◆	◆◆	◆
Hungary	◆	◆	◆◆	◆
Iceland	◆	◆	◆◆	◆
India	◆	◆	◆	
Indonesia	◆	◆	◆◆	◆
Israel	◆	◆	◆◆	
Jamaica	◆		◆◆	◆
Japan	◆	◆	◆◆	◆
Jordan	◆	◆	◆◆	◆
Kenya	◆	◆	◆◆	
Korea, Republic of	◆	◆	◆◆	◆
Kuwait, the State of		◆		
Kyrgyz Republic	◆	◆	◆◆	◆
Latvia	◆	◆	◆◆	◆
Lesotho	◆	◆	◆	
Liechtenstein	◆	◆	◆	
Lithuania	◆	◆	◆◆	◆
Macao, China	◆	◆		
Malawi		◆		
Malaysia	◆	◆	◆	◆
Malta	◆	◆	◆◆	◆
Mauritius	◆	◆	◆	
Mexico	◆	◆	◆◆	
Moldova, Republic of	◆	◆	◆◆	◆
Mongolia	◆	◆	◆	
Montenegro			◆*	
Morocco	◆	◆	◆◆	
Mozambique		◆		
Myanmar				◆
Nepal	◆	◆	◆◆	
New Zealand	◆	◆	◆◆	◆
Nicaragua	◆	◆	◆	
Nigeria	◆	◆	◆	◆
Norway	◆	◆	◆◆	◆
Oman	◆	◆	◆◆	◆
Pakistan	◆	◆	◆◆	
Panama	◆	◆	◆	
Papua New Guinea		◆	◆◆	◆
Paraguay	◆	◆		
Peru	◆	◆	◆◆	◆

	Insurance and insurance-related services	Banking and other financial services	Telecommunication services	Maritime transport services
Philippines	◆	◆	◆	◆
Poland	◆	◆	◆◆	
Qatar	◆	◆		
Romania	◆	◆	◆◆	
Saint Kitts and Nevis			◆	◆
Saint Lucia	◆			◆
Saint Vincent and the Grenadines	◆			◆
Saudi Arabia, Kingdom of	◆	◆	◆◆	◆
Senegal	◆	◆	◆◆	◆
Sierra Leone	◆	◆		◆
Singapore	◆	◆	◆◆	◆
Slovak Republic	◆	◆	◆◆	
Slovenia	◆	◆	◆◆	◆
Solomon Islands	◆	◆		
South Africa	◆	◆	◆◆	
Sri Lanka	◆	◆	◆◆	
Suriname			◆◆	
Sweden	◆	◆	◆	
Switzerland	◆	◆	◆◆	
Chinese Taipei	◆	◆	◆◆	
Thailand	◆	◆	◆	◆
The former Yugoslav Republic of Macedonia	◆	◆	◆	
Tonga	◆	◆	◆◆	◆
Trinidad and Tobago	◆		◆◆	◆
Tunisia	◆	◆	◆	
Turkey	◆	◆	◆	◆
Uganda			◆◆	
Ukraine	◆	◆	◆◆	◆
United Arab Emirates		◆		
Uruguay	◆	◆		
United States	◆	◆	◆◆	
Vanuatu			◆*	
Venezuela, Bolivarian Republic of	◆	◆	◆	◆
Viet Nam	◆	◆	◆◆	◆
Zimbabwe		◆	◆	

Sources: Compiled from data on the WTO Services Database (http://tsdb.wto.org/Default.aspx) and from information supplied by the WTO Services Division.

Notes: Data not available for the Lao People's Democratic Republic, the Russian Federation and Samoa. *Some EU members made commitments of their own, but these generally are countries that acceded to the European Union after 1995.

◆ = The member made a commitment in the sector.

◆◆ = The member made a commitment in the telecommunications sector and also adopted the Reference Paper.

◆* = The member adopted the Reference Paper but otherwise made no commitments in the telecommunications sector.