

The priority is to settle disputes, not to pass judgement

1. A unique contribution

Dispute settlement is the central pillar of the multilateral trading system, and the WTO's unique contribution to the stability of the global economy. Without a means of settling disputes, the rules-based system would be less effective because the rules could not be enforced. The WTO's procedure underscores the rule of law, and it makes the trading system more secure and predictable. The system is based on clearly-defined rules, with timetables for completing a case. First rulings are made by a panel and endorsed (or rejected) by the WTO's full membership. Appeals based on points of law are possible.

However, the point is not to pass judgement. The priority is to settle disputes, through consultations if possible. By January 2008, only about 136 of the 369 cases had reached the full panel process. Most of the rest have either been notified as settled "out of court" or remain in a prolonged consultation phase — some since 1995.

Principles: equitable, fast, effective, mutually acceptable

Disputes in the WTO are essentially about broken promises. WTO members have agreed that if they believe fellow-members are violating trade rules, they will use the multilateral system of settling disputes instead of taking action unilaterally. That means abiding by the agreed procedures, and respecting judgements.

A dispute arises when one country adopts a trade policy measure or takes some action that one or more fellow-WTO members considers to be breaking the WTO agreements, or to be a failure to live up to obligations. A third group of countries can declare that they have an interest in the case and enjoy some rights.

A procedure for settling disputes existed under the old GATT, but it had no fixed timetables, rulings were easier to block, and many cases dragged on for a long time inconclusively. The Uruguay Round agreement introduced a more structured



What is this agreement called?

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

Panels

Panels are like tribunals. But unlike in a normal tribunal, the panellists are usually chosen in consultation with the countries in dispute. Only if the two sides cannot agree does the WTO director-general appoint them.

Panels consist of three (possibly five) experts from different countries who examine the evidence and decide who is right and who is wrong. The panel's report is passed to the Dispute Settlement Body, which can only reject the report by consensus.

Panellists for each case can be chosen from a permanent list of well-qualified candidates, or from elsewhere. They serve in their individual capacities. They cannot receive instructions from any government.



More cases can be good news

If the courts find themselves handling an increasing number of criminal cases, does that mean law and order is breaking down? Not necessarily. Sometimes it means that people have more faith in the courts and the rule of law. They are turning to the courts instead of taking the law into their own hands.

For the most part, that is what is happening in the WTO. No one likes to see countries quarrel. But if there are going to be trade disputes anyway, it is healthier that the cases are handled according to internationally agreed rules. There are strong grounds for arguing that the increasing number of disputes is simply the result of expanding world trade and the stricter rules negotiated in the Uruguay Round; and that the fact that more are coming to the WTO reflects a growing faith in the system.

process with more clearly defined stages in the procedure. It introduced greater discipline for the length of time a case should take to be settled, with flexible deadlines set in various stages of the procedure. The agreement emphasizes that prompt settlement is essential if the WTO is to function effectively. It sets out in considerable detail the procedures and the timetable to be followed in resolving disputes. If a case runs its full course to a first ruling, it should not normally take more than about one year — 15 months if the case is appealed. The agreed time limits are flexible, and if the case is considered urgent (e.g. if perishable goods are involved), it is accelerated as much as possible.

The Uruguay Round agreement also made it impossible for the country losing a case to block the adoption of the ruling. Under the previous GATT procedure, rulings could only be adopted by consensus, meaning that a single objection could block the ruling. Now, rulings are automatically adopted unless there is a consensus to reject a ruling — any country wanting to block a ruling has to persuade all other WTO members (including its adversary in the case) to share its view.

Although much of the procedure does resemble a court or tribunal, the preferred solution is for the countries concerned to discuss their problems and settle the dispute by themselves. The first stage is therefore consultations between the governments concerned, and even when the case has progressed to other stages, consultation and mediation are still always possible.

How are disputes settled?

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

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

Officially, the panel is helping the Dispute Settlement Body make rulings or recommendations. But because the panel’s report can only be rejected by consensus in the Dispute Settlement Body, its conclusions are difficult to overturn. The panel’s findings have to be based on the agreements cited.

The panel’s final report should normally be given to the parties to the dispute within six months. In cases of urgency, including those concerning perishable goods, the deadline is shortened to three months.

The agreement describes in some detail how the panels are to work. The main stages are:

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

Appeals

Either side can appeal a panel's ruling. Sometimes both sides do so. Appeals have to be based on points of law such as legal interpretation — they cannot reexamine existing evidence or examine new issues.

Each appeal is heard by three members of a permanent seven-member Appellate Body set up by the Dispute Settlement Body and broadly representing the range of WTO membership. Members of the Appellate Body have four-year terms. They have to be individuals with recognized standing in the field of law and international trade, not affiliated with any government.

The appeal can uphold, modify or reverse the panel's legal findings and conclusions. Normally appeals should not last more than 60 days, with an absolute maximum of 90 days.

The Dispute Settlement Body has to accept or reject the appeals report within 30 days — and rejection is only possible by consensus.

How long to settle a dispute?

These approximate periods for each stage of a dispute settlement procedure are target figures — the agreement is flexible. In addition, the countries can settle their dispute themselves at any stage. Totals are also approximate.

60 days	Consultations, mediation, etc
45 days	Panel set up and panellists appointed
6 months	Final panel report to parties
3 weeks	Final panel report to WTO members
60 days	Dispute Settlement Body adopts report (if no appeal)
Total = 1 year	(without appeal)
60–90 days 30 days	Appeals report Dispute Settlement Body adopts appeals report
Total = 1y 3m	(with appeal)

The case has been decided: what next?

Go directly to jail. Do not pass Go, do not collect Well, not exactly. But the sentiments apply. If a country has done something wrong, it should swiftly correct its fault. And if it continues to break an agreement, it should offer compensation or suffer a suitable penalty that has some bite.

Even once the case has been decided, there is more to do before trade sanctions (the conventional form of penalty) are imposed. The priority at this stage is for the losing “defendant” to bring its policy into line with the ruling or recommendations. The dispute settlement agreement stresses that “prompt compliance with recommendations or rulings of the DSB [Dispute Settlement Body] is essential in order to ensure effective resolution of disputes to the benefit of all Members”.

If the country that is the target of the complaint loses, it must follow the recommendations of the panel report or the appeal report. It must state its intention to do so at a Dispute Settlement Body meeting held within 30 days of the report’s adoption. If complying with the recommendation immediately proves impractical, the member will be given a “reasonable period of time” to do so. If it fails to act within this period, it has to enter into negotiations with the complaining country (or countries) in order to determine mutually-acceptable compensation — for instance, tariff reductions in areas of particular interest to the complaining side.

If after 20 days, no satisfactory compensation is agreed, the complaining side may ask the Dispute Settlement Body for permission to impose limited trade sanctions (“suspend concessions or obligations”) against the other side. The Dispute Settlement Body must grant this authorization within 30 days of the expiry of the “reasonable period of time” unless there is a consensus against the request.

In principle, the sanctions should be imposed in the same sector as the dispute. If this is not practical or if it would not be effective, the sanctions can be imposed in a different sector of the same agreement. In turn, if this is not effective or practicable and if the circumstances are serious enough, the action can be taken under another agreement. The objective is to minimize the chances of actions spilling over into unrelated sectors while at the same time allowing the actions to be effective.

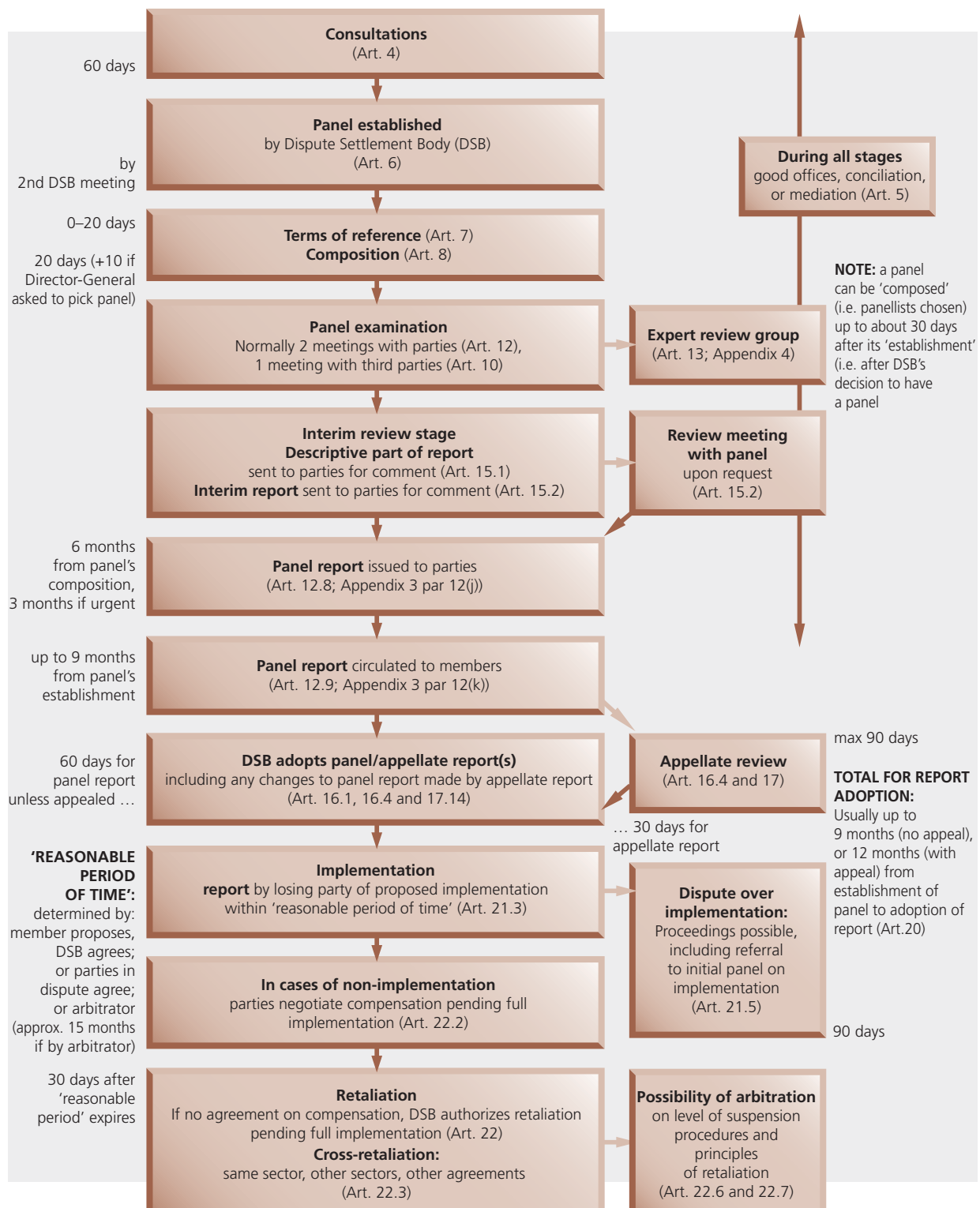
In any case, the Dispute Settlement Body monitors how adopted rulings are implemented. Any outstanding case remains on its agenda until the issue is resolved.

> See also **Doha Agenda negotiations**

2. The panel process

The various stages a dispute can go through in the WTO. At all stages, countries in dispute are encouraged to consult each other in order to settle “out of court”. At all stages, the WTO director-general is available to offer his good offices, to mediate or to help achieve a conciliation.

Note: some specified times are maximums, some are minimums, some binding, some not



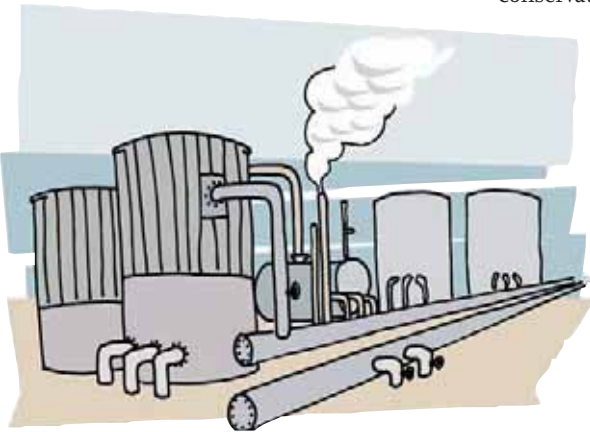
3. Case study: the timetable in practice

On 23 January 1995, Venezuela complained to the Dispute Settlement Body that the United States was applying rules that discriminated against gasoline imports, and formally requested consultations with the United States. Just over a year later (on 29 January 1996) the dispute panel completed its final report. (By then, Brazil had joined the case, lodging its own complaint in April 1996. The same panel considered both complaints.) The United States appealed. The Appellate Body completed its report, and the Dispute Settlement Body adopted the report on 20 May 1996, one year and four months after the complaint was first lodged.

The United States and Venezuela then took six and a half months to agree on what the United States should do. The agreed period for implementing the solution was 15 months from the date the appeal was concluded (20 May 1996 to 20 August 1997).

The case arose because the United States applied stricter rules on the chemical characteristics of imported gasoline than it did for domestically-refined gasoline. Venezuela (and later Brazil) said this was unfair because US gasoline did not have to meet the same standards — it violated the “national treatment” principle and could not be justified under exceptions to normal WTO rules for health and environmental conservation measures. The dispute panel agreed with Venezuela and Brazil. The

appeal report upheld the panel’s conclusions (making some changes to the panel’s legal interpretation). The United States agreed with Venezuela that it would amend its regulations within 15 months and on 26 August 1997 it reported to the Dispute Settlement Body that a new regulation had been signed on 19 August.



ON THE WEBSITE:
www.wto.org > trade topics > dispute settlement



Time (0 = start of case)	Target/ actual period	Date	Action
-5 years -4 months		1990 September 1994	US Clean Air Act amended US restricts gasoline imports under Clean Air Act
0	"60 days"	23 January 1995	Venezuela complains to Dispute Settlement Body, asks for consultation with US
+1 month		24 February 1995	Consultations take place. Fail.
+2 months		25 March 1995	Venezuela asks Dispute Settlement Body for a panel
+2½ months	"30 days"	10 April 1995	Dispute Settlement Body agrees to appoint panel. US does not block. (Brazil starts complaint, requests consultation with US.)
+3 months		28 April 1995	Panel appointed. (31 May, panel assigned to Brazilian complaint as well)
+6 months	9 months (target is 6-9)	10-12 July and 13-15 July 1995	Panel meets
+11 months		11 December 1995	Panel gives interim report to US, Venezuela and Brazil for comment
+1 year		29 January 1996	Panel circulates final report to members
+1 year, 1 month	"60 days"	21 February 1996	US appeals
+1 year, 3 months		29 April 1996	Appellate Body submits report
+1 year, 4 months	"30 days"	20 May 1996	Dispute Settlement Body adopts panel and appeal reports
+1 year, 10½ months		3 December 1996	US and Venezuela agree on what US should do (implementation period is 15 months from 20 May)
+1 year, 11½ months		9 January 1997	US makes first of monthly reports to Dispute Settlement Body on status of implementation
+2 years, 7 months		19-20 August 1997	US signs new regulation (19th). End of agreed implementation period (20th)



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



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

They include:

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



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

- trade and labour rights

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



1. Regionalism: friends or rivals?

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

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

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



Regional trading arrangements

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

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

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

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

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

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

ON THE WEBSITE:

www.wto.org > trade topics > goods
> regional trade agreements



> See also **Doha Agenda negotiations**

2. The environment: a specific concern

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

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

> See also **Doha Agenda negotiations**

The committee: broad-based responsibility

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

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

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

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

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

'Green' provisions

Examples of provisions in the WTO agreements dealing with environmental issues

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

A key question

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

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

WTO and environmental agreements: how are they related?

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

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

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

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

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

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

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

> See also **Doha Agenda negotiations**

Disputes: where should they be handled?

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

A WTO dispute: The 'shrimp-turtle' case

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

What was it all about?

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

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

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

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

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

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

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

WHAT THE APPELLATE BODY SAID

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

Legally speaking ...

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

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

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



The ruling

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

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

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

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

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

‘What we have not decided ...’

This is part of what the Appellate Body said:

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

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

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

A GATT dispute: The tuna-dolphin dispute

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

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

What was it all about?

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



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

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

The panel

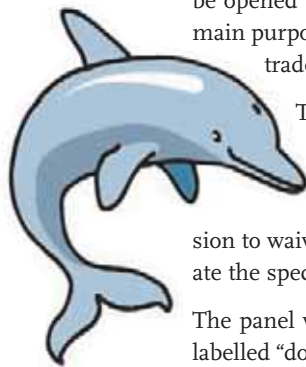
Mexico asked for a panel in February 1991. A number of “intermediary” countries also expressed an interest. The panel reported to GATT members in September 1991. It concluded:

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

PS. The report was never adopted

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

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



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

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

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

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

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

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

Transparency: information without too much paperwork

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

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

Domestically prohibited goods: dangerous chemicals, etc

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

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

Liberalization and sustainable development: good for each other

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

Intellectual property, services: some scope for study

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

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

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



ON THE WEBSITE:

www.wto.org > trade topics > environment

> See also **Doha Agenda negotiations**

3. Investment, competition, procurement, simpler procedures

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

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

> See also **Doha Development Agenda**

Investment and competition: what role for the WTO?

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

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

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

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

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

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

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

ON THE WEBSITE:

www.wto.org > trade topics > investment
www.wto.org > trade topics > competition policy



Transparency in government purchases: towards multilateral rules

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

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

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



ON THE WEBSITE:

www.wto.org > trade topics > government procurement

Trade facilitation: a new high profile

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

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

ON THE WEBSITE:

www.wto.org > trade topics > trade facilitation



4. Electronic commerce

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

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

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



ON THE WEBSITE:

www.wto.org > trade topics > electronic commerce

The official answer

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

5. Labour standards: consensus, coherence and controversy

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

Consensus on core standards, work deferred to the ILO

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

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

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

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

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

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

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

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

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

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

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

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

What has happened in the WTO?

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

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



THE DOHA AGENDA

The work programme lists 21 subjects. The original deadline of 1 January 2005 was missed. So was the next unofficial target of the end of 2006

At the Fourth Ministerial Conference in Doha, Qatar, in November 2001 WTO member governments agreed to launch new negotiations. They also agreed to work on other issues, in particular the implementation of the present agreements. The entire package is called the **Doha Development Agenda (DDA)**.

The negotiations take place in the **Trade Negotiations Committee** and its subsidiaries, which are usually, either regular councils and committees meeting in “special sessions”, or specially-created **negotiating groups**. Other work under the work programme takes place in other WTO councils and committees.

The **Fifth Ministerial Conference in Cancún**, Mexico, in September 2003, was intended as a stock-taking meeting where members would agree on how to complete the rest of the negotiations. But the meeting was soured by discord on agricultural issues, including cotton, and ended in deadlock on the “Singapore issues” (*see below*). Real progress on the Singapore issues and agriculture was not evident until the early hours of 1 August 2004 with a set of decisions in the General Council (sometimes called the July 2004 package). The original **1 January 2005 deadline** was missed. After that, members unofficially aimed to finish the negotiations **by the end of 2006**, again unsuccessfully. Further progress in narrowing members’ differences was made at the Hong Kong Ministerial Conference in December 2005, but some gaps remained unbridgeable and Director-General Pascal Lamy suspended the negotiations in July 2006. Efforts then focused on trying to achieve a breakthrough in early 2007.

There are 19–21 subjects listed in the Doha Declaration, depending on whether to count the “rules” subjects as one or three. Most of them involve negotiations; other work includes actions under “implementation”, analysis and monitoring. This is an unofficial explanation of what the declaration mandates (listed with the declaration’s paragraphs that refer to them):

Implementation-related issues and concerns (par 12)

“Implementation” is short-hand for developing countries’ problems in implementing the current WTO Agreements, i.e. the agreements arising from the Uruguay Round negotiations.

No area of WTO work received more attention or generated more controversy during nearly three years of hard bargaining before the Doha Ministerial Conference. Around 100 issues were raised during that period. The result was a two-pronged approach:

- More than 40 items under 12 headings were settled at or before the Doha conference for immediate delivery.
- The vast majority of the remaining items immediately became the subject of negotiations.

This was spelt out in a separate ministerial decision on implementation, combined with paragraph 12 of the main Doha Declaration.

The **implementation decision** includes the following (detailed explanations can be seen on the WTO website):

General Agreement on Tariffs and Trade (GATT)

- Balance-of-payments exception: clarifying less stringent conditions in GATT for developing countries if they restrict imports in order to protect their balance-of-payments.
- Market-access commitments: clarifying eligibility to negotiate or be consulted on quota allocation.

ON THE WEBSITE:

www.wto.org

> trade topics > Doha Development Agenda

www.wto.org >

the WTO > General Council

www.wto.org >

trade topics > Doha Development Agenda

> Trade Negotiations Committee



Agriculture

- Rural development and food security for developing countries.
- Least-developed and net food-importing developing countries.
- Export credits, export credit guarantees or insurance programmes.
- Tariff rate quotas.

Sanitary and phytosanitary (SPS) measures

- More time for developing countries to comply with other countries' new SPS measures.
- Reasonable interval" between publication of a country's new SPS measure and its entry into force.
- Equivalence: putting into practice the principle that governments should accept that different measures used by other governments can be equivalent to their own measures for providing the same level of health protection for food, animals and plants.
- Review of the SPS Agreement.
- Developing countries' participation in setting international SPS standards.
- Financial and technical assistance.

Textiles and clothing

- "Effective" use of the agreement's provisions on early integration of products into normal GATT rules, and elimination of quotas.
- Restraint in anti-dumping actions.
- The possibility of examining governments' new rules of origin.
- Members to consider favourable quota treatment for small suppliers and least-developed countries, and larger quotas in general.

Technical barriers to trade

- Technical assistance for least-developed countries, and reviews of technical assistance in general.
- When possible, a six-month "reasonable interval" for developing countries to adapt to new measures.
- The WTO director-general encouraged to continue efforts to help developing countries participate in setting international standards.

Trade-related investment measures (TRIMs)

- The Goods Council is "to consider positively" requests from least-developed countries to extend the seven-year transition period for eliminating measures that are inconsistent with the agreement.

Anti-dumping (GATT Article 6)

- No second anti-dumping investigation within a year unless circumstances have changed.
- How to put into operation a special provision for developing countries (Article 15 of the Anti-Dumping Agreement), which recognizes that developed countries must give "special regard" to the situation of developing countries when considering applying anti-dumping measures.
- Clarification sought on the time period for determining whether the volume of dumped imported products is negligible, and therefore no anti-dumping action should be taken.
- Annual reviews of the agreement's implementation to be improved.

Customs valuation (GATT Article 7)

- Extending the deadline for developing countries to implement the agreement.
- Dealing with fraud: how to cooperate in exchanging information, including on export values.

Rules of origin

- Completing the harmonization of rules of origin among member governments.
- Dealing with interim arrangements in the transition to the new, harmonized rules of origin.

Subsidies and countervailing measures

- Sorting out how to determine whether some developing countries meet the test of being below US\$1,000 per capita GNP allowing them to pay subsidies that require the recipient to export.
- Noting proposed new rules allowing developing countries to subsidize under programmes that have “legitimate development goals” without having to face countervailing or other action.
- Review of provisions on countervailing duty investigations.
- Reaffirming that least-developed countries are exempt from the ban on export subsidies.
- Directing the Subsidies Committee to extend the transition period for certain developing countries.

Trade-related aspects of intellectual property rights (TRIPS)

- “Non-violation” complaints: the unresolved question of how to deal with possible TRIPS disputes involving loss of an expected benefit even if the TRIPS Agreement has not actually been violated.
- Technology transfer to least-developed countries.

Cross-cutting issues

- Which special and differential treatment provisions are mandatory? What are the implications of making mandatory those that are currently non-binding?
- How can special and differential treatment provisions be made more effective?
- How can special and differential treatment be incorporated in the new negotiations?
- Developed countries are urged to grant preferences in a generalized and non-discriminatory manner, i.e. to all developing countries rather than to a selected group.

Outstanding implementation issues

- To be handled under paragraph 12 of the main Doha Declaration.

Final provisions

- The WTO Director-General is to ensure that WTO technical assistance gives priority to helping developing countries implement existing WTO obligations, and to increase their capacity to participate more effectively in future negotiations.
- The WTO Secretariat is to cooperate more closely with other international organizations so that technical assistance is more efficient and effective.

The implementation decision is tied into the **main Doha Declaration**, where ministers agreed on a future work programme to deal with unsettled implementation questions. “Negotiations on outstanding implementation issues shall be an integral part of the Work Programme” in the coming years, they declared. In the declaration, the ministers established 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.



ON THE WEBSITE:

www.wto.org > trade topics > Doha Development
Agenda > Implementation Decision Explained

Those implementation issues where there is no mandate to negotiate, would be the taken up as “a matter of priority” by relevant WTO councils and committees. These bodies were to report on their progress to the Trade Negotiations Committee by the end of 2002 for “appropriate action”.

Agriculture (pars 13, 14)

Key dates: agriculture

Start: early 2000

*“Framework” agreed:
1 August 2004*

Formulas and other “modalities” for countries’ commitments: originally 31 March 2003, now by 6th Ministerial Conference, 2005 (in Hong Kong, China)

Countries’ comprehensive draft commitments and stock taking: originally by 5th Ministerial Conference, 2003 (in Mexico)

*Deadline: Now none.
Originally by 1 January 2005, then unofficially by end of 2006.
Part of single undertaking*

Negotiations on agriculture began in early 2000, under Article 20 of the WTO Agriculture Agreement. By November 2001 and the Doha Ministerial Conference, 121 governments had submitted a large number of negotiating proposals.

These negotiations have continued, but now with the mandate given by the Doha Declaration, which also includes a series of deadlines. The declaration builds on the work already undertaken, confirms and elaborates the objectives, and sets a timetable. Agriculture is now part of the single undertaking in which virtually all the linked negotiations were to end by 1 January 2005, now with the unofficial target of the end of 2006.

The declaration reconfirms the long-term objective already agreed in the present WTO Agreement: to establish a fair and market-oriented trading system through a programme of fundamental reform. The programme encompasses strengthened rules, and specific commitments on government support and protection for agriculture. The purpose is to correct and prevent restrictions and distortions in world agricultural markets.

Without prejudging the outcome, member governments commit themselves to comprehensive negotiations aimed at:

- market access: substantial reductions
- exports subsidies: reductions of, with a view to phasing out, all forms of these (in the 1 August 2004 “framework” members agreed to eliminate export subsidies by a date to be negotiated)
- domestic support: substantial reductions for supports that distort trade (in the 1 August 2004 “framework”, developed countries pledged to slash trade-distorting domestic subsidies by 20% from the first day any Doha Agenda agreement is implemented).

The declaration makes special and differential treatment for developing countries integral throughout the negotiations, both in countries’ new commitments and in any relevant new or revised rules and disciplines. It says the outcome should be effective in practice and should enable developing countries to meet their needs, in particular in food security and rural development.

The ministers also take note of the non-trade concerns (such as environmental protection, food security, rural development, etc) reflected in the negotiating proposals already submitted. They confirm that the negotiations will take these into account, as provided for in the Agriculture Agreement.

A first step along the road to final agreement was reached on 1 August 2004 when members agreed on a “framework” (Annex A of the General Council decision).

The negotiations take place in “special sessions” of the Agriculture Committee.

ON THE WEBSITE:

www.wto.org > trade topics > goods > agriculture > agriculture negotiations



Services (par 15)

Negotiations on services were already almost two years old when they were incorporated into the new Doha agenda.

The WTO General Agreement on Trade in Services (GATS) commits member governments to undertake negotiations on specific issues and to enter into successive rounds of negotiations to progressively liberalize trade in services. The first round had to start no later than five years from 1995.

Accordingly, the services negotiations started officially in early 2000 under the Council for Trade in Services. In March 2001, the Services Council fulfilled a key element in the negotiating mandate by establishing the negotiating guidelines and procedures.

The Doha Declaration endorses the work already done, reaffirms the negotiating guidelines and procedures, and establishes some key elements of the timetable including, most importantly, the deadline for concluding the negotiations as part of a single undertaking.

The negotiations take place in “**special sessions**” of the **Services Council** and **regular meetings** of its relevant subsidiary committees or working parties.

Key dates: services

Start: early 2000

Negotiating guidelines and procedures: March 2001

Initial requests for market access: by 30 June 2002

Initial offers of market access: by 31 March 2003

Stock taking: originally 5th Ministerial Conference, 2003 (in Mexico)

Revised market-access offers: by 31 May 2005

Deadline: Now none.

Originally by 1 January 2005, then unofficially by end of 2006. Part of single undertaking



ON THE WEBSITE:

www.wto.org > trade topics > services > services negotiations

Market access for non-agricultural products (par 16)

The ministers agreed to launch tariff-cutting negotiations on all non-agricultural products. The aim is “to reduce, or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries”. These negotiations shall take fully into account the special needs and interests of developing and least-developed countries, and recognize that these countries do not need to match or reciprocate in full tariff-reduction commitments by other participants.

At the start, participants have to reach agreement on how (“modalities”) to conduct the tariff-cutting exercise (in the Tokyo Round, the participants used an agreed mathematical formula to cut tariffs across the board; in the Uruguay Round, participants negotiated cuts product by product). The agreed procedures would include studies and capacity-building measures that would help least-developed countries participate effectively in the negotiations. Back in Geneva, negotiators decided that the “modalities” should be agreed by 31 May 2003. When that date was missed, members agreed on 1 August 2004 on a new target: the Hong Kong Ministerial Conference in December 2005.

While average customs duties are now at their lowest levels after eight GATT Rounds, certain tariffs continue to restrict trade, especially on exports of developing countries — for instance “tariff peaks”, which are relatively high tariffs, usually on “sensitive” products, amidst generally low tariff levels. For industrialized countries, tariffs of 15% and above are generally recognized as “tariff peaks”.

Another example is “tariff escalation”, in which higher import duties are applied on semi-processed products than on raw materials, and higher still on finished products. This practice protects domestic processing industries and discourages the development of processing activity in the countries where raw materials originate.

The negotiations take place in a **Market Access Negotiating Group**.

Key dates: market access

Start: January 2002

Stock taking: 5th Ministerial Conference, 2003 (in Mexico)

Deadline: Now none.

Originally by 1 January 2005, then unofficially by end of 2006. Part of single undertaking



ON THE WEBSITE:

www.wto.org > trade topics > market access > market access negotiations

Key dates: intellectual property

Report to the General Council — solution on compulsory licensing and lack of pharmaceutical production capacity: originally by end of 2002, decision agreed 30 April 2003

Report to TNC — action on outstanding implementation issues under par 12: by end of 2002 (missed)

Deadline — negotiations on geographical indications registration system (wines and spirits): by 5th Ministerial Conference, 2003 (in Mexico) (missed)

Deadline — negotiations specifically mandated in Doha Declaration: now none. Originally by 1 January 2005, then unofficially by end of 2006. Part of single undertaking

Least-developed countries to apply pharmaceutical patent provisions: 2016

Trade-related aspects of intellectual property rights (TRIPS) (pars 17–19)

TRIPS and public health. In the declaration, ministers stress that it is important to implement and interpret the TRIPS Agreement in a way that supports public health — by promoting both access to existing medicines and the creation of new medicines. They refer to their separate declaration on this subject.

This separate declaration on TRIPS and public health is designed to respond to concerns about the possible implications of the TRIPS Agreement for access to medicines.

It emphasizes that the TRIPS Agreement does not and should not prevent member governments from acting to protect public health. It affirms governments' right to use the agreement's flexibilities in order to avoid any reticence the governments may feel. The separate declaration clarifies some of the forms of flexibility available, in particular compulsory licensing and parallel importing. (For an explanation of these issues, go to the main TRIPS pages on the WTO website)

For the Doha agenda, this separate declaration sets two specific task. The **TRIPS Council** has to find a solution to the problems countries may face in making use of compulsory licensing if they have too little or no pharmaceutical manufacturing capacity, reporting to the General Council on this by the end of 2002 (this was achieved in August, 2003, *see intellectual property section of the "Agreements" chapter*). The declaration also extends the deadline for least-developed countries to apply provisions on pharmaceutical patents until 1 January 2016.

Geographical indications — the registration system. Geographical indications are place names (in some countries also words associated with a place) used to identify products with particular characteristics because they come from specific places. The WTO TRIPS Council has already started work on a multilateral registration system for geographical indications for wines and spirits. The Doha Declaration sets a deadline for completing the negotiations: the Fifth Ministerial Conference in 2003.

These negotiations take place in "special sessions" of the TRIPS Council.



Geographical indications — extending the “higher level of protection” to other products. The TRIPS Agreement provides a higher level of protection to geographical indications for wines and spirits. This means they should be protected even if there is no risk of misleading consumers or unfair competition. A number of countries want to negotiate extending this higher level to other products. Others oppose the move, and the debate in the TRIPS Council has included the question of whether the relevant provisions of the TRIPS Agreement provide a mandate for extending coverage beyond wines and spirits.

The Doha Declaration notes that the **TRIPS Council** will handle this under the declaration's paragraph 12 (which deals with implementation issues). Paragraph 12 offers two tracks: “(a) where we provide a specific negotiating mandate in this Declaration, the relevant implementation issues shall be addressed under that mandate; (b) the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which shall report to the Trade Negotiations Committee [TNC], established under paragraph 46 below, by the end of 2002 for appropriate action.”

In papers circulated at the Ministerial Conference, member governments expressed different interpretations of this mandate.

Argentina said it understands “there is no agreement to negotiate the ‘other outstanding implementation issues’ referred to under (b) and that, by the end of 2002, consensus will be required in order to launch any negotiations on these issues”.

Bulgaria, the Czech Republic, EU, Hungary, India, Liechtenstein, Kenya, Mauritius, Nigeria, Pakistan, the Slovak Republic, Slovenia, Sri Lanka, Switzerland, Thailand and Turkey argued that there is a clear mandate to negotiate immediately.

Reviews of TRIPS provision. Two reviews have been taking place in the TRIPS Council, as required by the TRIPS Agreement: a review of Article 27.3(b) which deals with patentability or non-patentability of plant and animal inventions, and the protection of plant varieties; and a review of the entire TRIPS Agreement (required by Article 71.1).

The Doha Declaration says that work in the **TRIPS Council** on these reviews or any other implementation issue should also look at: the relationship between the TRIPS Agreement and the UN Convention on Biodiversity; the protection of traditional knowledge and folklore; and other relevant new developments that member governments raise in the review of the TRIPS Agreement. It adds that the TRIPS Council's work on these topics is to be guided by the TRIPS Agreement's objectives (Article 7) and principles (Article 8), and must take development fully into account.



ON THE WEBSITE:

www.wto.org > trade topics > intellectual property

The four 'Singapore' issues:
no negotiations until ...

For trade and investment, trade and competition policy, transparency in government procurement and trade facilitation, the 2001 Doha declaration does not launch negotiations immediately. It says "negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations [i.e. how the negotiations are to be conducted]."

But consensus eluded members on negotiating the four subjects. Finally agreements was reached on 1 August 2004 to negotiate **trade facilitation** alone. The three other subjects were dropped from the Doha agenda.

Key dates: trade and investment

Continuing work in working group with defined agenda: to 5th Ministerial Conference, 2003 (in Mexico)

Negotiations: after 5th Ministerial Conference, 2003 (in Mexico) subject to "explicit consensus" on modalities with deadline: by 1 January 2005, part of single undertaking. But no consensus: dropped from Doha agenda in 1 August 2004 decision

Key dates: trade and competition policy

Continuing work in working group with defined agenda: to 5th Ministerial Conference, 2003 (in Mexico)

Negotiations: after 5th Ministerial Conference, 2003 (in Mexico) subject to "explicit consensus" on modalities with deadline: by 1 January 2005, part of single undertaking. But no consensus: dropped from Doha agenda in 1 August 2004 decision

Relationship between trade and investment (pars 20–22)

This is a "Singapore issue" i.e. a **working group** set up by the 1996 Singapore Ministerial Conference has been studying it.

In the period up to the 2003 Ministerial Conference, the declaration instructs the **working group** to focus on clarifying the scope and definition of the issues, transparency, non-discrimination, ways of preparing negotiated commitments, development provisions, exceptions and balance-of-payments safeguards, consultation and dispute settlement. The negotiated commitments would be modelled on those made in services, which specify where commitments are being made — "positive lists" — rather than making broad commitments and listing exceptions.

The declaration also spells out a number of principles such as the need to balance the interests of countries where foreign investment originates and where it is invested, countries' right to regulate investment, development, public interest and individual countries' specific circumstances. It also emphasizes support and technical cooperation for developing and least-developed countries, and coordination with other international organizations such as the UN Conference on Trade and Development (UNCTAD).

Since the 1 August 2004 decision, this subject has been dropped from the Doha agenda.

ON THE WEBSITE:



www.wto.org > trade topics > investment

Interaction between trade and competition policy (pars 23–25)

This is another "Singapore issue", with a working group set up in 1996 to study the subject.

In the period up to the 2003 Ministerial Conference, the declaration instructs the **working group** to focus on clarifying:

- core principles including transparency, non-discrimination and procedural fairness, and provisions on "hardcore" cartels (i.e. cartels that are formally set up)
- ways of handling voluntary cooperation on competition policy among WTO member governments
- support for progressive reinforcement of competition institutions in developing countries through capacity building.

The declaration says the work must take full account of developmental needs. It includes technical cooperation and capacity building, on such topics as policy analysis and development, so that developing countries are better placed to evaluate the implications of closer multilateral cooperation for various developmental objectives. Cooperation with other organizations such as the UN Conference on Trade and Development (UNCTAD) is also included.

Since the 1 August 2004 decision, this subject has been dropped from the Doha agenda.

ON THE WEBSITE:



www.wto.org > trade topics > competition policy

Transparency in government procurement (par 26)

A third “Singapore issue” that was handled by a working group set up by the Singapore Ministerial Conference in 1996.

The Doha Declaration says that the “negotiations shall be limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers” — it is separate from the plurilateral Government Procurement Agreement.

The declaration also stresses development concerns, technical assistance and capacity building.

Since the 1 August 2004 decision, this subject has been dropped from the Doha agenda.

Key dates: government procurement (transparency)

Continuing work in working group with defined agenda: to 5th Ministerial Conference, 2003 (in Mexico)

Negotiations: after 5th Ministerial Conference, 2003 (in Mexico) subject to “explicit consensus” on modalities with deadline: by 1 January 2005, part of single undertaking. But no consensus: dropped from Doha agenda in 1 August 2004 decision

ON THE WEBSITE:

www.wto.org > trade topics > government procurement



Trade facilitation (par 27)

A fourth “Singapore issue” kicked off by the 1996 Ministerial Conference.

The declaration recognizes the case for “further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area”.

In the period until the Fifth Ministerial Conference in 2003, the **WTO Goods Council**, which had been working on this subject since 1997, “shall review and as appropriate, clarify and improve relevant aspects of Articles 5 (‘Freedom of Transit’), 8 (‘Fees and Formalities Connected with Importation and Exportation’) and 10 (‘Publication and Administration of Trade Regulations’) of the General Agreement on Tariffs and Trade (GATT 1994) and identify the trade facilitation needs and priorities of Members, in particular developing and least-developed countries”.

Those issues were cited in the 1 August 2004 decision that broke the Cancún deadlock. Members agreed to start negotiations on trade facilitation, but not the three other Singapore issues.

Key dates: trade facilitation

Continuing work in Goods Council with defined agenda: to 5th Ministerial Conference, 2003 (in Mexico)

Negotiations: after 5th Ministerial Conference, 2003 (in Mexico) subject to “explicit consensus” on modalities, agreed in 1 August 2004 decision.

Deadline: Now none. Originally by 1 January 2005, then unofficially by end of 2006. Part of single undertaking

ON THE WEBSITE:

www.wto.org > trade topics > trade facilitation



Key dates: anti-dumping, subsidies

Start: January 2002

Stock taking: 5th Ministerial Conference, 2003 (in Mexico)

Deadline: Now none.

Originally by 1 January 2005, then unofficially by end of 2006.

Part of single undertaking

WTO rules: anti-dumping and subsidies (par 28)

The ministers agreed to negotiations on the Anti-Dumping (GATT Article 6) and Subsidies agreements. The aim is to clarify and improve disciplines while preserving the basic concepts, principles of these agreements, and taking into account the needs of developing and least-developed participants.

In overlapping negotiating phases, participants first indicated which provisions of these two agreements they think should be the subject of clarification and improvement in the next phase of negotiations. The ministers mention specifically fisheries subsidies as one sector important to developing countries and where participants should aim to clarify and improve WTO disciplines.

Negotiations take place in the **Rules Negotiating Group**.

ON THE WEBSITE:

www.wto.org > trade topics > goods > antidumping

www.wto.org > trade topics > goods > subsidies and countervailing measures



WTO rules: regional trade agreements (par 29)

WTO rules say regional trade agreements have to meet certain conditions. But interpreting the wording of these rules has proved controversial, and has been a central element in the work of the Regional Trade Agreements Committee. As a result, since 1995 the committee has failed to complete its assessments of whether individual trade agreements conform with WTO provisions.

This is now an important challenge, particularly when nearly all member governments are parties to regional agreements, are negotiating them, or are considering negotiating them. In the Doha Declaration, members agreed to negotiate a solution, giving due regard to the role that these agreements can play in fostering development.

The declaration mandates negotiations aimed at “clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations shall take into account the developmental aspects of regional trade agreements.”

These negotiations fell into the general timetable established for virtually all negotiations under the Doha Declaration. The original deadline of 1 January 2005 was missed and the current unofficial aim is to finish the talks by the end of 2006. The 2003 Fifth Ministerial Conference in Mexico was intended to take stock of progress, provide any necessary political guidance, and take decisions as necessary.

Negotiations take place in the **Rules Negotiating Group**.

ON THE WEBSITE:

www.wto.org > trade topics > goods > regional trade agreements



Key dates: regional trade

Start: January 2002

Stock taking: 5th Ministerial Conference, 2003 (in Mexico)

Deadline: Now none.

Originally by 1 January 2005, then unofficially by end of 2006.

Part of single undertaking

Dispute Settlement Understanding (par 30)

The 1994 Marrakesh Ministerial Conference mandated WTO member governments to conduct a review of the Dispute Settlement Understanding (DSU, the WTO agreement on dispute settlement) within four years of the entry into force of the WTO Agreement (i.e. by 1 January 1999).

The Dispute Settlement Body (DSB) started the review in late 1997, and held a series of informal discussions on the basis of proposals and issues that members identified. Many, if not all, members clearly felt that improvements should be made to the understanding. However, the DSB could not reach a consensus on the results of the review.

The Doha Declaration mandates negotiations and states (in par 47) that these will not be part of the single undertaking — i.e. that they will not be tied to the overall success or failure of the other negotiations mandated by the declaration. Originally set to conclude by May 2003, the negotiations are continuing without a deadline.

Negotiations take place in “special sessions” of the Dispute Settlement Body.

Key dates: disputes understanding

Start: January 2002

Deadline: originally by May 2003, currently no deadline, separate from single undertaking

ON THE WEBSITE:

www.wto.org > trade topics > dispute settlement



Trade and environment (pars 31–33)

New negotiations

Multilateral environmental agreements. Ministers agreed to launch negotiations on the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements. The negotiations will address how WTO rules are to apply to WTO members that are parties to environmental agreements, in particular to clarify the relationship between trade measures taken under the environmental agreements and WTO rules.

So far no measure affecting trade taken under an environmental agreement has been challenged in the GATT-WTO system.

Information exchange. Ministers agreed to negotiate procedures for regular information exchange between secretariats of multilateral environmental agreements and the WTO. Currently, the Trade and Environment Committee holds an information session with different secretariats of the multilateral environmental agreements once or twice a year to discuss the trade-related provisions in these environmental agreements and also their dispute settlement mechanisms. The new information exchange procedures may expand the scope of existing cooperation.

Observer status. Overall, the situation concerning the granting of observer status in the WTO to other international governmental organizations is currently blocked for political reasons. The negotiations aim to develop criteria for observership in WTO.

Trade barriers on environmental goods and services. Ministers also agreed to negotiations on the reduction or elimination of tariff and non-tariff barriers to environmental goods and services. Examples of environmental goods and services are catalytic converters, air filters or consultancy services on wastewater management.

Key dates: environment

Committee reports to ministers: 5th and 6th Ministerial Conference, 2003 and 2005 (in Mexico and Hong Kong, China)

Negotiations stock taking: 5th Ministerial Conference, 2003 (in Mexico)

Negotiations deadline: now none. Originally by 1 January 2005, then unofficially by end of 2006. Part of single undertaking

Fisheries subsidies. Ministers agreed to clarify and improve WTO rules that apply to fisheries subsidies. The issue of fisheries subsidies has been studied in the Trade and Environment Committee for several years. Some studies demonstrate these subsidies can be environmentally damaging if they lead to too many fishermen chasing too few fish.

Negotiations on these issues, including concepts of what are the relevant environmental goods and services, take place in “**special sessions**” of the **Trade and Environment Committee**. Negotiations on market access for environmental goods and services take place in the **Market Access Negotiating Group** and **Services Council** “**special sessions**”.

Work in the committee

Ministers instructed the **Trade and Environment Committee**, in pursuing work on all items on its agenda, to pay particular attention to the following areas:

- The effect of environmental measures on market access, especially for developing countries.
- Win-win-win” situations: when eliminating or reducing trade restrictions and distortions would benefit trade, the environment and development.
- Intellectual property. Paragraph 19 of the Ministerial Declaration mandates the TRIPS Council to continue clarifying the relationship between the TRIPS Agreement and the Biological Diversity Convention. Ministers also ask the Trade and Environment Committee to continue to look at the relevant provisions of the TRIPS agreement.
- Environmental labelling requirements. The Trade and Environment Committee is to look at the impact of eco-labelling on trade and examine whether existing WTO rules stand in the way of eco-labelling policies. Parallel discussions are to take place in the Technical Barriers to Trade (TBT) Committee.
- For all these issues: when working on these (market access, “win-win-win” situations, intellectual property and environmental labelling), the Trade and Environment Committee should identify WTO rules that would need to be clarified.
- General: ministers recognize the importance of technical assistance and capacity building programmes for developing countries in the trade and environment area. They also encourage members to share expertise and experience on national environmental reviews.



ON THE WEBSITE:

www.wto.org > trade topics > environment

Electronic commerce (par 34)

The Doha Declaration endorses the work already done on electronic commerce and instructs the **General Council** to consider the most appropriate institutional arrangements for handling the work programme, and to report on further progress to the Fifth Ministerial Conference.

The declaration on electronic commerce from the Second Ministerial Conference in Geneva, 1998, said that WTO members will continue their practice of not imposing customs duties on electronic transmissions. The Doha Declaration states that members will continue this practice until the Fifth Ministerial Conference.



ON THE WEBSITE:

www.wto.org > trade topics > electronic commerce

Small economies (par 35)

Small economies face specific challenges in their participation in world trade, for example lack of economy of scale or limited natural resources.

The Doha Declaration mandates the **General Council** to examine these problems and to make recommendations to the next Ministerial Conference as to what trade-related measures could improve the integration of small economies.

Trade, debt and finance (par 36)

Many developing countries face serious external debt problems and have been through financial crises. WTO ministers decided in Doha to establish a **Working Group on Trade, Debt and Finance** to look at how trade-related measures can contribute to find a durable solution to these problems. This working group will report to the General Council which will in turn report to the next Ministerial Conference.

Trade and technology transfer (par 37)

A number of provisions in the WTO agreements mention the need for a transfer of technology to take place between developed and developing countries.

However, it is not clear how such a transfer takes place in practice and if specific measures might be taken within the WTO to encourage such flows of technology.

WTO ministers decided in Doha to establish a working group to examine the issue. The **working group** will report to the General Council which itself will report to the next Ministerial Conference.

Technical cooperation and capacity building (pars 38–41)

Through various paragraphs of the Doha Declaration, WTO member governments have made new commitments on technical cooperation and capacity building. For example, the section on the relationship between trade and investment includes a call (par 21) for enhanced support for technical assistance and capacity building in this area.

Within the specific heading “technical cooperation and capacity building”, paragraph 41 lists all the references to commitments on technical cooperation within the Doha Declaration: paragraphs 16 (market access for non-agricultural products), 21 (trade and investment), 24 (trade and competition policy), 26 (transparency in government procurement), 27 (trade facilitation), 33 (environment),

Key date: electronic commerce

Report on further progress: 5th Ministerial Conference, 2003 (in Mexico)

Key date: small economies

Recommendations: 5th and 6th Ministerial Conferences, 2003 and 2005 (in Mexico and Hong Kong, China)

Key date: debt and finance

General Council report: 5th and 6th Ministerial Conferences, 2003 and 2005 (in Mexico and Hong Kong, China)

Key date: technology transfer

General Council report: 5th and 6th Ministerial Conferences, 2003 and 2005 (in Mexico and Hong Kong, China)

Key dates: technical cooperation

Technical assistance funding raised 80%; Development Agenda Global Trust Fund set up: December 2001

Director-General reports to General Council: December 2002

Director-General reports to ministers: 5th and 6th Ministerial Conferences, 2003 and 2005 (in Mexico and Hong Kong, China)

38-40 (technical cooperation and capacity building), 42 and 43 (least-developed countries). (Paragraph 2 in the preamble is also cited.)

Under this heading (i.e. pars 38–41), WTO member governments reaffirm all technical cooperation and capacity building commitments made throughout the declaration and add general commitments:

- The Secretariat, in coordination with other relevant agencies, is to encourage WTO developing-country members to consider trade as a main element for reducing poverty and to include trade measures in their development strategies.
- The agenda set out in the Doha Declaration gives priority to small, vulnerable, and transition economies, as well as to members and observers that do not have permanent delegations in Geneva.
- Technical assistance must be delivered by the WTO and other relevant international organizations within a coherent policy framework.

The **Director-General** reported to the **General Council** in December 2002 and to the **Fifth Ministerial Conference** on the implementation and adequacy of these new commitments.

Following the declaration's instructions to develop a plan ensuring long-term funding for WTO technical assistance, the **General Council** adopted on 20 December 2001 (one month after the Doha conference) a new budget that increased technical assistance funding by 80% and established a Doha Development Agenda Global Trust Fund with a proposed core budget of 15 million Swiss francs. The fund now has an annual budget of 24 million Swiss francs.



ON THE WEBSITE:

www.wto.org > trade topics > development > technical cooperation & training

Key date: least-developed countries

*Reports to: General Council: July 2002,
5th and 6th Ministerial Conferences,
2003 and 2005 (in Mexico and Hong Kong,
China)*

Least-developed countries (pars 42, 43)

Many developed countries have now significantly decreased or actually scrapped tariffs on imports from least-developed countries (LDCs).

In the Doha declaration, WTO **member governments** commit themselves to the objective of duty-free, quota-free market access for LDCs' products and to consider additional measures to improve market access for these exports.

Members also agree to try to ensure that least-developed countries can negotiate WTO membership faster and more easily.

Some technical assistance is targeted specifically for least-developed countries. The Doha Declaration urges **WTO member donors** to significantly increase their contributions.

In addition, the **Sub-Committee for LDCs** (a subsidiary body of the WTO Committee on Trade and Development) designed a work programme in February 2002, as instructed by the Doha Declaration, taking into account the parts of the declaration related to trade that was issued at the UN LDC Conference.



ON THE WEBSITE:

www.wto.org > trade topics > development

Special and differential treatment (par 44)

The WTO agreements contain special provisions which give developing countries special rights. These special provisions include, for example, longer time periods for implementing agreements and commitments or measures to increase trading opportunities for developing countries.

In the Doha Declaration, member governments agree that all special and differential treatment provisions should be reviewed with a view to strengthening them and making them more precise.

More specifically, the declaration (together with the Decision on Implementation-Related Issues and Concerns) mandates the **Trade and Development Committee** to identify which of those special and differential treatment provisions are mandatory, and to consider the implications of making mandatory those which are currently non-binding.

The Decision on Implementation-Related Issues and Concerns instructed the committee to make its recommendations for the **General Council** before July 2002. But because members needed more time, this was postponed to the end of July 2005.

ON THE WEBSITE:

www.wto.org > trade topics > development



Key date: special and differential treatment

*Recommendations to General Council:
July 2002, July 2005*

Cancún 2003, Hong Kong 2005

The Doha agenda set a number of tasks to be completed before or at the Fifth Ministerial Conference in Cancún, Mexico, 10–14 September 2003. On the eve of the conference, on 30 August, agreement was reached on the TRIPS and public health issue. However, a number of the deadlines were missed, including “modalities” for agriculture and the non-agricultural market access negotiations, reform of the Dispute Settlement Understanding, and recommendations on special and differential treatment. Nor were members near to agreement on the multilateral geographical indications register for wines and spirits, due to be completed in Cancún.

Although Cancún saw delegations move closer to consensus on a number of key issues, members remained deeply divided over a number of issues, including the “Singapore” issues — launching negotiations on investment, competition policy, transparency in government procurement, and trade facilitation — and agriculture.

The conference ended without consensus. Ten months later, the deadlock was broken in Geneva when the General Council agreed on the “July package” in the early hours of 1 August 2004, which kicked off negotiations in trade facilitation but not the three other Singapore issues. The delay meant the 1 January 2005 deadline for finishing the talks could not be met. Unofficially, members aimed to complete the next phase of the negotiations at the Hong Kong Ministerial Conference, 13–18 December 2005, including full “modalities” in agriculture and market access for non-agricultural products, and to finish the talks by the end of the following year.

ON THE WEBSITE:

www.wto.org > the wto > decision making > ministerial conferences





How the WTO deals with the special needs of an increasingly important group

1. Overview

About two thirds of the WTO's around 150 members are developing countries. They play an increasingly important and active role in the WTO because of their numbers, because they are becoming more important in the global economy, and because they increasingly look to trade as a vital tool in their development efforts. Developing countries are a highly diverse group often with very different views and concerns. The WTO deals with the special needs of developing countries in three ways:

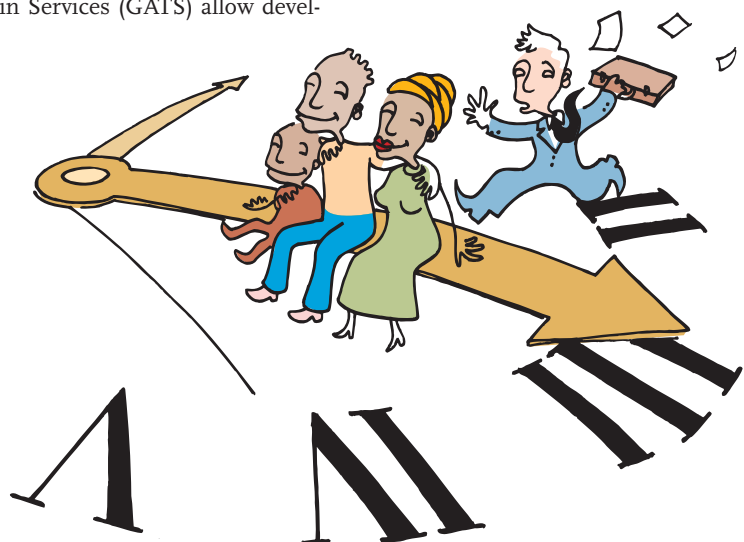
- the **WTO agreements** contain **special provisions** on developing countries
- the **Committee on Trade and Development** is the main body focusing on work in this area in the WTO, with some others dealing with specific topics such as trade and debt, and technology transfer
- the **WTO Secretariat** provides **technical assistance** (mainly training of various kinds) for developing countries.

In the agreements: more time, better terms

The WTO agreements include numerous provisions giving developing and least-developed countries special rights or extra leniency — “special and differential treatment”. Among these are provisions that allow developed countries to treat developing countries more favourably than other WTO members.

The General Agreement on Tariffs and Trade (GATT, which deals with trade in goods) has a special section (Part 4) on Trade and Development which includes provisions on the concept of non-reciprocity in trade negotiations between developed and developing countries — when developed countries grant trade concessions to developing countries they should not expect the developing countries to make matching offers in return.

Both GATT and the General Agreement on Trade in Services (GATS) allow developing countries some preferential treatment.



Other measures concerning developing countries in the WTO agreements include:

- **extra time** for developing countries to fulfil their commitments (in many of the WTO agreements)
- provisions designed to increase developing countries' **trading opportunities** through greater market access (e.g. in textiles, services, technical barriers to trade)
- provisions requiring WTO members to **safeguard the interests** of developing countries when adopting some domestic or international measures (e.g. in anti-dumping, safeguards, technical barriers to trade)
- provisions for various **means of helping** developing countries (e.g. to deal with commitments on animal and plant health standards, technical standards, and in strengthening their domestic telecommunications sectors).

Legal assistance: a Secretariat service

The WTO Secretariat has special legal advisers for assisting developing countries in any WTO dispute and for giving them legal counsel. The service is offered by the WTO's Training and Technical Cooperation Institute. Developing countries regularly make use of it.

Furthermore, in 2001, 32 WTO governments set up an Advisory Centre on WTO law. Its members consist of countries contributing to the funding, and those receiving legal advice. All least-developed countries are automatically eligible for advice. Other developing countries and transition economies have to be fee-paying members in order to receive advice.

Least-developed countries: special focus

The least-developed countries receive extra attention in the WTO. All the WTO agreements recognize that they must benefit from the greatest possible flexibility, and better-off members must make extra efforts to lower import barriers on least-developed countries' exports.

Since the Uruguay Round agreements were signed in 1994, several decisions in favour of least-developed countries have been taken.

Meeting in Singapore in 1996, WTO ministers agreed on a "Plan of Action for Least-Developed Countries". This included technical assistance to enable them to participate better in the multilateral system and a pledge from developed countries to improved market access for least-developed countries' products.

A year later, in October 1997, six international organizations — the International Monetary Fund, the International Trade Centre, the United Nations Conference for Trade and Development, the United Nations Development Programme, the World Bank and the WTO — launched the "Integrated Framework", a joint technical assistance programme exclusively for least-developed countries.

In 2002, the WTO adopted a work programme for least-developed countries. It contains several broad elements: improved market access; more technical assistance; support for agencies working on the diversification of least-developed countries' economies; help in following the work of the WTO; and a speedier membership process for least-developed countries negotiating to join the WTO.

At the same time, more and more member governments have unilaterally scrapped import duties and import quotas on all exports from least-developed countries.

A 'maison' in Geneva: being present is important, but not easy for all

The WTO's official business takes place mainly in Geneva. So do the unofficial contacts that can be equally important. But having a permanent office of representatives in Geneva can be expensive. Only about one third of the 30 or so least-developed countries in the WTO have permanent offices in Geneva, and they cover all United Nations activities as well as the WTO.

As a result of the negotiations to locate the WTO headquarters in Geneva, the Swiss government has agreed to provide subsidized office space for delegations from least-developed countries.

A number of WTO members also provide financial support for ministers and accompanying officials from least-developed countries to help them attend WTO ministerial conferences.

ON THE WEBSITE:

www.wto.org > trade topics > development



2. Committees

Work specifically on developing countries within the WTO itself can be divided into two broad areas: (i) work of the WTO committees (this heading), and (ii) training for government officials (and others) by the WTO Secretariat as mandated by the committee (next heading).

Trade and Development Committee

The WTO Committee on Trade and Development has a wide-ranging mandate. Among the broad areas of topics it has tackled as priorities are: how provisions favouring developing countries are being implemented, guidelines for technical cooperation, increased participation of developing countries in the trading system, and the position of least-developed countries.

Member countries also have to inform the WTO about special programmes involving trade concessions for products from developing countries, and about regional arrangements among developing countries. The Trade and Development Committee handles notifications of:

- Generalized System of Preferences programmes (in which developed countries lower their trade barriers preferentially for products from developing countries)
- preferential arrangements among developing countries such as MERCOSUR (the Southern Common Market in Latin America), the Common Market for Eastern and Southern Africa (COMESA), and the ASEAN Free Trade Area (AFTA).

Sub-committee on Least-Developed Countries

The Sub-committee on Least-Developed Countries reports to the Trade and Development Committee, but it is an important body in its own right. Its work focuses on two related issues:

- ways of integrating least-developed countries into the multilateral trading system
- technical cooperation.

The sub-committee also examines periodically how special provisions favouring least-developed countries in the WTO agreements are being implemented.

The Doha agenda committees

The Doha Ministerial Conference in November 2001, added new tasks and some new working groups. The Trade and Development Committee meets in “special sessions” to handle work under the Doha Development Agenda. The ministers also set up working groups on Trade, Debt and Finance, and on Trade and Technology Transfer. (For details see the chapter on the Doha Agenda.)

3. WTO technical cooperation

Technical cooperation is an area of WTO work that is devoted almost entirely to helping developing countries (and countries in transition from centrally-planned economies) operate successfully in the multilateral trading system. The objective is to help build the necessary institutions and to train officials. The subjects covered deal both with trade policies and with effective negotiation.

Training, seminars and workshops

The WTO holds regular training sessions on trade policy in Geneva. In addition, it organizes about 500 technical cooperation activities annually, including seminars and workshops in various countries and courses in Geneva.

Targeted are developing countries and countries in transition from former socialist or communist systems, with a special emphasis on African countries. Seminars have also been organized in Asia, Latin America, the Caribbean, Middle East and Pacific.

Funding for technical cooperation and training comes from three sources: the WTO’s regular budget, voluntary contributions from WTO members, and cost-sharing either by countries involved in an event or by international organizations.

The present regular WTO budget for technical cooperation and training is 7 million Swiss francs.

Extra contributions by member countries go into trust funds administered by the WTO Secretariat or the donor country. In 2004, contributions to trust funds totalled 24 million Swiss francs.

A WTO Reference Centre programme was initiated in 1997 with the objective of creating a network of computerized information centres in least-developed and developing countries. The centres provide access to WTO information and documents through a print library, a CD-ROM collection and through the Internet to WTO websites and databases. The centres are located mainly in trade ministries and in the headquarters of regional coordination organizations. There are currently 140 reference centres.

4. Some issues raised

The Uruguay Round (1986–94) saw a shift in North-South politics in the GATT-WTO system. Previously, developed and developing countries had tended to be in opposite groups, although even then there were exceptions. In the run up to the Uruguay Round, the line between the two became less rigid, and during the round different alliances developed, depending on the issues. The trend has continued since then.

In some issues, the divide still appears clear — in textiles and clothing, and some of the newer issues debated in the WTO, for example — and developing countries have organized themselves into alliances such as the African Group and the Least-Developed Countries Group.

In many others, the developing countries do not share common interests and may find themselves on opposite sides of a negotiation. A number of different coalitions among different groups of developing countries have emerged for this reason. The differences can be found in subjects of immense importance to developing countries, such as agriculture.

This is a summary of some of the points discussed in the WTO.

Peaks' and 'escalation': what are they?

Tariff peaks: Most import tariffs are now quite low, particularly in developed countries. But for a few products that governments consider to be sensitive — they want to protect their domestic producers — tariffs remain high. These are “tariff peaks”. Some affect exports from developing countries.

Tariff escalation: If a country wants to protect its processing or manufacturing industry, it can set low tariffs on imported materials used by the industry (cutting the industry's costs) and set higher tariffs on finished products to protect the goods produced by the industry. This is “tariff escalation”. When importing countries escalate their tariffs in this way, they make it more difficult for countries producing raw materials to process and manufacture value-added products for export. Tariff escalation exists in both developed and developing countries. Slowly, it is being reduced.

Participation in the system: opportunities and concerns

The WTO agreements, which were the outcome of the 1986–94 Uruguay Round of trade negotiations, provide numerous opportunities for developing countries to make gains. Further liberalization through the Doha Agenda negotiations aims to improve the opportunities.

Among the gains are export opportunities. They include:

- fundamental reforms in agricultural trade
- phasing out quotas on developing countries' exports of textiles and clothing
- reductions in customs duties on industrial products
- expanding the number of products whose customs duty rates are "bound" under the WTO, making the rates difficult to raise
- phasing out bilateral agreements to restrict traded quantities of certain goods — these "grey area" measures (the so-called voluntary export restraints) are not really recognized under GATT-WTO.

In addition, liberalization under the WTO boosts global GDP and stimulates world demand for developing countries' exports.

But a number of problems remain. Developing countries have placed on the Doha Agenda a number of problems they face in implementing the present agreements. And they complain that they still face exceptionally high tariffs on selected products ("tariff peaks") in important markets that continue to obstruct their important exports. Examples include tariff peaks on textiles, clothing, and fish and fish products. In the Uruguay Round, on average, industrial countries made slightly smaller reductions in their tariffs on products which are mainly exported by developing countries (37%), than on imports from all countries (40%). At the same time, the potential for developing countries to trade with each other is also hampered by the fact that the highest tariffs are sometimes in developing countries themselves. But the increased proportion of trade covered by "bindings" (committed ceilings that are difficult to remove) has added security to developing country exports.

A related issue is "tariff escalation", where an importing country protects its processing or manufacturing industry by setting lower duties on imports of raw materials and components, and higher duties on finished products. The situation is improving. Tariff escalation remains after the Uruguay Round, but it is less severe, with a number of developed countries eliminating escalation on selected products. Now, the Doha agenda includes special attention to be paid to tariff peaks and escalation so that they can be substantially reduced.

Erosion of preferences

An issue that worries developing countries is the erosion of preferences — special tariff concessions granted by developed countries on imports from certain developing countries become less meaningful if the normal tariff rates are cut because the difference between the normal and preferential rates is reduced.

Just how valuable these preferences are is a matter of debate. Unlike regular WTO tariff commitments, they are not “bound” under WTO agreements and therefore they can be changed easily. They are often given unilaterally, at the initiative of the importing country. This makes trade under preferential rates less predictable than under regular bound rates which cannot be increased easily. Ultimately countries stand to gain more from regular bound tariff rates.

But some countries and some companies have benefited from preferences. The gains vary from product to product, and they also depend on whether producers can use the opportunity to adjust so that they remain competitive after the preferences have been withdrawn.

The ability to adapt: the supply-side

Can developing countries benefit from the changes? Yes, but only if their economies are capable of responding. This depends on a combination of actions: from improving policy-making and macroeconomic management, to boosting training and investment. The least-developed countries are worst placed to make the adjustments because of lack of human and physical capital, poorly developed infrastructures, institutions that don't function very well, and in some cases, political instability.



THE ORGANIZATION

The WTO is 'member-driven', with decisions taken by consensus among all member governments

1. Whose WTO is it anyway?

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

In this respect, the WTO is different from some other international organizations such as the World Bank and International Monetary Fund. In the WTO, power is not delegated to a board of directors or the organization's head.

When WTO rules impose disciplines on countries' policies, that is the outcome of negotiations among WTO members. The rules are enforced by the members themselves under agreed procedures that they negotiated, including the possibility of trade sanctions. But those sanctions are imposed by member countries, and authorized by the membership as a whole. This is quite different from other agencies whose bureaucracies can, for example, influence a country's policy by threatening to withhold credit.

Reaching decisions by consensus among some 150 members can be difficult. Its main advantage is that decisions made this way are more acceptable to all members. And despite the difficulty, some remarkable agreements have been reached. Nevertheless, proposals for the creation of a smaller executive body — perhaps like a board of directors each representing different groups of countries — are heard periodically. But for now, the WTO is a member-driven, consensus-based organization.

Highest authority: the Ministerial Conference

So, the WTO belongs to its members. The countries make their decisions through various councils and committees, whose membership consists of all WTO members. Topmost is the ministerial conference which has to meet at least once every two years. The Ministerial Conference can take decisions on all matters under any of the multilateral trade agreements.

ALTERNATIVE VIEW

'The WTO will likely suffer from slow and cumbersome policy-making and management — an organization with more than 120 member countries cannot be run by a "committee of the whole". Mass management simply does not lend itself to operational efficiency or serious policy discussion.

Both the IMF and the World Bank have an executive board to direct the executive officers of the organization, with permanent participation by the major industrial countries and weighted voting. The WTO will require a comparable structure to operate efficiently. ... [But] the political orientation of smaller ... members remains strongly opposed.'

Jeffrey J Schott

Institute for International Economics,
Washington

ON THE WEBSITE:

www.wto.org > the WTO > decision making
> ministerial conferences



Voting is possible, too

The WTO continues GATT's tradition of making decisions not by voting but by consensus. This allows all members to ensure their interests are properly considered even though, on occasion, they may decide to join a consensus in the overall interests of the multilateral trading system.

Where consensus is not possible, the WTO agreement allows for voting — a vote being won with a majority of the votes cast and on the basis of “one country, one vote”.

The WTO Agreement envisages four specific situations involving voting:

- An interpretation of any of the multilateral trade agreements can be adopted by a majority of three quarters of WTO members.
- The Ministerial Conference can waive an obligation imposed on a particular member by a multilateral agreement, also through a three-quarters majority.
- Decisions to amend provisions of the multilateral agreements can be adopted through approval either by all members or by a two-thirds majority depending on the nature of the provision concerned. But the amendments only take effect for those WTO members which accept them.
- A decision to admit a new member is taken by a two-thirds majority in the Ministerial Conference, or the General Council in between conferences.

Goods Council's committees

Market access
Agriculture
Sanitary and phytosanitary measures
Textiles Monitoring Body
Technical barriers to trade
Subsidies and countervail
Anti-dumping
Customs valuation
Rules of origin
Import licensing
Investment measures
Safeguards
State trading (working party)

Second level: General Council in three guises

Day-to-day work in between the ministerial conferences is handled by three bodies:

- The General Council
- The Dispute Settlement Body
- The Trade Policy Review Body

All three are in fact the same — the Agreement Establishing the WTO states they are all the General Council, although they meet under different terms of reference. Again, all three consist of all WTO members. They report to the Ministerial Conference.

The General Council acts on behalf of the Ministerial Conference on all WTO affairs. It meets as the Dispute Settlement Body and the Trade Policy Review Body to oversee procedures for settling disputes between members and to analyze members' trade policies.



ON THE WEBSITE:

www.wto.org > the WTO > General Council

Third level: councils for each broad area of trade, and more

Three more councils, each handling a different broad area of trade, report to the General Council:

- The Council for Trade in Goods (**Goods Council**)
- The Council for Trade in Services (**Services Council**)
- The Council for Trade-Related Aspects of Intellectual Property Rights (**TRIPS Council**)

As their names indicate, the three are responsible for the workings of the WTO agreements dealing with their respective areas of trade. Again they consist of all WTO members. The three also have subsidiary bodies (*see below*).

Six other bodies report to the General Council. The scope of their coverage is smaller, so they are “committees”. But they still consist of all WTO members. They cover issues such as trade and development, the environment, regional trading arrangements, and administrative issues. The Singapore Ministerial Conference in December 1996 decided to create new working groups to look at investment and competition policy, transparency in government procurement, and trade facilitation.

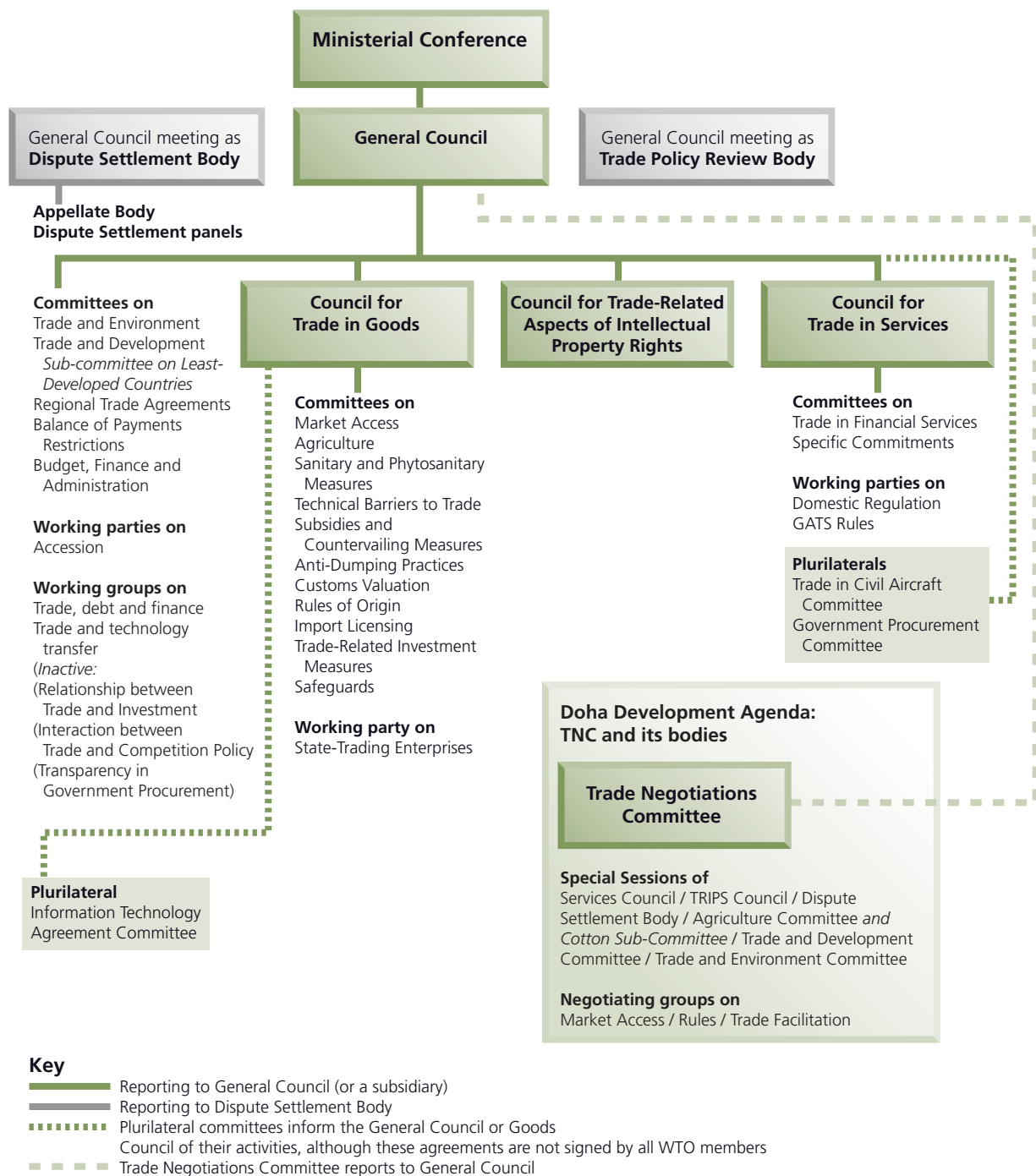
Two more subsidiary bodies dealing with the plurilateral agreements (which are not signed by all WTO members) keep the General Council informed of their activities regularly.

Fourth level: down to the nitty-gritty

Each of the higher level councils has subsidiary bodies. The **Goods Council** has 11 committees dealing with specific subjects (such as agriculture, market access, subsidies, anti-dumping measures and so on). Again, these consist of all member countries. Also reporting to the Goods Council is the Textiles Monitoring Body, which consists of a chairman and 10 members acting in their personal capacities, and groups dealing with notifications (governments informing the WTO about current and new policies or measures) and state trading enterprises.

WTO structure

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



The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body

Same people, different hats?

No, not exactly.

Formally, all of these councils and committees consist of the full membership of the WTO. But that does not mean they are the same, or that the distinctions are purely bureaucratic.

In practice the people participating in the various councils and committees are different because different levels of seniority and different areas of expertise are needed.

Heads of missions in Geneva (usually ambassadors) normally represent their countries at the General Council level. Some of the committees can be highly specialized and sometimes governments send expert officials from their capital cities to participate in these meetings.

Even at the level of the Goods, Services and TRIPS councils, many delegations assign different officials to cover the different meetings.

The **Services Council's** subsidiary bodies deal with financial services, domestic regulations, GATS rules and specific commitments.

At the General Council level, the **Dispute Settlement Body** also has two subsidiaries: the dispute settlement “panels” of experts appointed to adjudicate on unresolved disputes, and the Appellate Body that deals with appeals.

‘HODs’ and other bods: the need for informality

Important breakthroughs are rarely made in formal meetings of these bodies, least of all in the higher level councils. Since decisions are made by consensus, without voting, informal consultations within the WTO play a vital role in bringing a vastly diverse membership round to an agreement.

One step away from the formal meetings are informal meetings that still include the full membership, such as those of the Heads of Delegations (HOD). More difficult issues have to be thrashed out in smaller groups. A common recent practice is for the chairperson of a negotiating group to attempt to forge a compromise by holding consultations with delegations individually, in twos or threes, or in groups of 20–30 of the most interested delegations.

These smaller meetings have to be handled sensitively. The key is to ensure that everyone is kept informed about what is going on (the process must be “transparent”) even if they are not in a particular consultation or meeting, and that they have an opportunity to participate or provide input (it must be “inclusive”).

One term has become controversial, but more among some outside observers than among delegations. The “Green Room” is a phrase taken from the informal name of the director-general's conference room. It is used to refer to meetings of 20–40 delegations, usually at the level of heads of delegations. These meetings can take place elsewhere, such as at Ministerial Conferences, and can be called by the minister chairing the conference as well as the director-general. Similar smaller group consultations can be organized by the chairs of committees negotiating individual subjects, although the term Green Room is not usually used for these.

In the past delegations have sometimes felt that Green Room meetings could lead to compromises being struck behind their backs. So, extra efforts are made to ensure that the process is handled correctly, with regular reports back to the full membership.

The way countries now negotiate has helped somewhat. In order to increase their bargaining power, countries have formed coalitions. In some subjects such as agriculture virtually all countries are members of at least one coalition — and in many cases, several coalitions. This means that all countries can be represented in the process if the coordinators and other key players are present. The coordinators also take responsibility for both “transparency” and “inclusiveness” by keeping their coalitions informed and by taking the positions negotiated within their alliances.

In the end, decisions have to be taken by all members and by consensus. The membership as a whole would resist attempts to impose the will of a small group. No one has been able to find an alternative way of achieving consensus on difficult issues, because it is virtually impossible for members to change their positions voluntarily in meetings of the full membership.

Market access negotiations also involve small groups, but for a completely different reason. The final outcome is a multilateral package of individual countries' commitments, but those commitments are the result of numerous bilateral, informal bargaining sessions, which depend on individual countries' interests. (Examples include the traditional tariff negotiations, and market access talks in services.)



So, informal consultations in various forms play a vital role in allowing consensus to be reached, but they do not appear in organization charts, precisely because they are informal.

They are not separate from the formal meetings, however. They are necessary for making formal decisions in the councils and committees. Nor are the formal meetings unimportant. They are the forums for exchanging views, putting countries' positions on the record, and ultimately for confirming decisions. The art of achieving agreement among all WTO members is to strike an appropriate balance, so that a breakthrough achieved among only a few countries can be acceptable to the rest of the membership.

2. Membership, alliances and bureaucracy

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

How to join the WTO: the accession process

Any state or customs territory having full autonomy in the conduct of its trade policies may join (“accede to”) the WTO, but WTO members must agree on the terms. Broadly speaking the application goes through four stages:

- **First, “tell us about yourself”.** The government applying for membership has to describe all aspects of its trade and economic policies that have a bearing on WTO agreements. This is submitted to the WTO in a memorandum which is examined by the working party dealing with the country's application. These working parties are open to all WTO members.
- **Second, “work out with us individually what you have to offer”.** When the working party has made sufficient progress on principles and policies, parallel bilateral talks begin between the prospective new member and individual countries. They are bilateral because different countries have different trading interests. These talks cover tariff rates and specific market access commitments, and other policies in goods and services. The new member's commitments are to apply equally to all WTO members under normal non-discrimination rules, even though they are negotiated bilaterally. In other words, the talks determine the benefits (in the form of export opportunities and guarantees) other WTO members can expect when the new member joins. (The talks can be highly complicated. It has been said that in some cases the negotiations are almost as large as an entire round of multilateral trade negotiations.)
- **Third, “let's draft membership terms”.** Once the working party has completed its examination of the applicant's trade regime, and the parallel bilateral market access negotiations are complete, the working party finalizes the terms of accession. These appear in a report, a draft membership treaty (“protocol of accession”) and lists (“schedules”) of the member-to-be's commitments.
- **Finally, “the decision”.** The final package, consisting of the report, protocol and lists of commitments, is presented to the WTO General Council or the Ministerial Conference. If a two-thirds majority of WTO members vote in favour, the applicant is free to sign the protocol and to accede to the organization. In many cases, the country's own parliament or legislature has to ratify the agreement before membership is complete.



ON THE WEBSITE:

www.wto.org > the WTO > accessions

The Quad, the Quint, the Six and ‘not’

Some of the most difficult negotiations have needed an initial breakthrough in talks among four to six “major” members.

Once upon a time, there was the “Quadrilaterals” or the “Quad”:

- Canada
- European Union
- Japan
- United States

Since the turn of the century and the launch of the Doha Round, developing countries' voices have increased considerably, bringing in Brazil and India — and Australia as a representative of the Cairns Group. Japan remains in the picture not only in its own right, but also as a member of the G-10 group in agriculture.

Since 2005, four, five or six of the following have got together to try to break deadlocks, particularly in agriculture:

- Australia
- Brazil
- European Union
- India
- Japan
- United States

They have been called “the new Quad”, the “Four/Five Interested Parties” (FIPS), the “Quint” and the “G-6.” The Doha Round was suspended in July 2006 because the six could not agree.

Afterwards an alternative group of six, sometimes called the “non-G-6” or the “Oslo Group” tried their hand at compromise, sometimes listed in reverse order to emphasise their “alternative” nature — Norway, New Zealand, Kenya, Indonesia, Chile, Canada

European Union

The EU is a WTO member in its own right as are each of its 27 member states — making 28 WTO members.

While the member states coordinate their position in Brussels and Geneva, the European Commission alone speaks for the EU at almost all WTO meetings. For this reason, in most issues WTO materials refer to the EU or the more legally-correct EC.

However, sometimes references are made to the specific member states, particularly where their laws differ. This is the case in some disputes when an EU member's law or measure is cited, or in notifications of EU member countries' laws, such as in intellectual property (TRIPS). Sometimes individuals' nationalities are identified, such as for WTO committee chairpersons.

The Cairns Group

From four continents, members ranging from OECD countries to the least developed:

Argentina
Australia
Bolivia
Brazil
Canada
Chile
Colombia
Costa Rica
Guatemala
Indonesia
Malaysia
New Zealand
Pakistan
Paraguay
Peru
Philippines
South Africa
Thailand
Uruguay

Representing us ...

The work of the WTO is undertaken by representatives of member governments but its roots lie in the everyday activity of industry and commerce. Trade policies and negotiating positions are prepared in capitals, usually taking into account advice from private firms, business organizations, farmers, consumers and other interest groups.

Most countries have a diplomatic mission in Geneva, sometimes headed by a special ambassador to the WTO. Officials from the missions attend meetings of the many councils, committees, working parties and negotiating groups at WTO headquarters. Sometimes expert representatives are sent directly from capitals to put forward their governments' views on specific questions.

Representing groups of countries ...

Increasingly, countries are getting together to form groups and alliances in the WTO. In many cases they even speak with one voice using a single spokesman or negotiating team. In the agriculture negotiations, well over 20 coalitions have submitted proposals or negotiated with a common position, most of them still active. The increasing number of coalitions involving developing countries reflects the broader spread of bargaining power in the WTO. One group is seen as politically symbolic of this change, the G-20, which includes Argentina, Brazil, China, Egypt, India, South Africa, Thailand and many others, but there are other, overlapping "Gs" too, and one "C" — the Cotton Four (C-4), an alliance of sub-Saharan countries lobbying for trade reform in the sector.

Coalition-building is partly the natural result of economic integration — more customs unions, free trade areas and common markets are being set up around the world. It is also seen as a means for smaller countries to increase their bargaining power in negotiations with their larger trading partners and to ensure they are represented when consultations are held among smaller groups of members. Sometimes when groups of countries adopt common positions consensus can be reached more easily. Sometimes the groups are specifically created to compromise and break a deadlock rather than to stick to a common position. But there are no hard and fast rules about the impact of groupings in the WTO.

The largest and most comprehensive group is the **European Union** and its 27 member states. The EU is a customs union with a single external trade policy and tariff. While the member states coordinate their position in Brussels and Geneva, the European Commission alone speaks for the EU at almost all WTO meetings. The EU is a WTO member in its own right as are each of its member states.

A lesser degree of economic integration has so far been achieved by WTO members in the **Association of South East Asian Nations (ASEAN)** — Brunei Darussalam, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Thailand, Singapore and Viet Nam. (The remaining member, Laos is applying to join the WTO.) Nevertheless, they have many common trade interests and are frequently able to coordinate positions and to speak with a single voice. The role of spokesman rotates among ASEAN members and can be shared out according to topic. **MERCOSUR, the Southern Common Market** (Argentina, Brazil, Paraguay, Uruguay and Venezuela, with Bolivia, Chile, Colombia, Ecuador and Peru as associate members), has a similar set-up.

More recent efforts at regional economic integration have not yet reached the point where their constituents frequently have a single spokesman on WTO issues. An example is the **North American Free Trade Agreement: NAFTA** (Canada, US and

Mexico). Among other groupings which occasionally present unified statements are the **African Group**, the **least-developed countries**, the **African, Caribbean and Pacific Group (ACP)** and the **Latin American Economic System (SELA)**.

A well-known alliance of a different kind is the **Cairns Group**. It was set up just before the Uruguay Round began in 1986 to argue for agricultural trade liberalization. The group became an important third force in the farm talks and remains in operation. Its members are diverse, but sharing a common objective — that agriculture has to be liberalized — and the common view that they lack the resources to compete with larger countries in domestic and export subsidies.

The WTO Secretariat and budget

The WTO Secretariat is located in Geneva. It has around 630 staff and is headed by a director-general. Its responsibilities include:

- Administrative and technical support for WTO delegate bodies (councils, committees, working parties, negotiating groups) for negotiations and the implementation of agreements.
- Technical support for developing countries, and especially the least-developed.
- Trade performance and trade policy analysis by WTO economists and statisticians.
- Assistance from legal staff in the resolution of trade disputes involving the interpretation of WTO rules and precedents.
- Dealing with accession negotiations for new members and providing advice to governments considering membership.

Some of the WTO's divisions are responsible for supporting particular committees: the Agriculture Division assists the committees on agriculture and on sanitary and phytosanitary measures, for example. Other divisions provide broader support for WTO activities: technical cooperation, economic analysis, and information, for example.

The WTO budget is over 180 million Swiss francs with individual contributions calculated on the basis of shares in the total trade conducted by WTO members. Part of the WTO budget also goes to the International Trade Centre.



3. The Secretariat

The WTO Secretariat is headed by a director-general. Divisions come directly under the director-general or one of his deputies.

Director-general
Pascal Lamy

Office of the director-general
Council and Trade Negotiations Committee Division:
General Council, Dispute Settlement Body,
Trade Negotiations Committee (DDA), etc
Office of Internal Audit
Human Resources Division
Information and External Relations Division

Deputy director-general
Alejandro Jara

Accessions Division:
negotiations to join the WTO
Economic Research and Statistics Division: economic analysis
and research, trade and finance, trade statistics
Legal Affairs Division: Dispute settlement, etc
Rules Division:
anti-dumping, subsidies, safeguards, state trading, civil aircraft, etc

Deputy director-general
Valentine Rugwabiza

Development Division:
trade and development, least-developed countries, Aid for Trade
Technical Cooperation Audit
Trade Policies Review Division: trade policy reviews, regional
trade agreements
Institute for Training and Technical Cooperation:
trade-related technical assistance

Deputy director-general
Harsha Vardhana Singh

Agriculture and Commodities Division:
agriculture, sanitary and phytosanitary measures, etc
Trade and Environment Division:
trade and environment, technical barriers to trade, etc
Trade in Services Division: GATS etc.

Deputy director-general
Rufus Yerxa

Administration and General Services Division:
budget, finance and administration
Informatics Division
Intellectual Property Division:
TRIPS, competition and government procurement
Language, Documentation and Information Management
Division
Market Access Division:
Goods Council, market access, tariffs, customs valuation,
non-tariff measures, import licensing, rules of origin,
preshipment inspection

4. Special policies

The WTO's main functions are to do with trade negotiations and the enforcement of negotiated multilateral trade rules (including dispute settlement). Special focus is given to four particular policies supporting these functions:

- Assisting developing and transition economies
- Specialized help for export promotion
- Cooperation in global economic policy-making
- Routine notification when members introduce new trade measures or alter old ones.

Assisting developing and transition economies

Developing countries make up about three quarters of the total WTO membership. Together with countries currently in the process of "transition" to market-based economies, they play an increasingly important role in the WTO.

Therefore, much attention is paid to the special needs and problems of developing and transition economies. The WTO Secretariat's Training and Technical Cooperation Institute organizes a number of programmes to explain how the system works and to help train government officials and negotiators. Some of the events are in Geneva, others are held in the countries concerned. A number of the programmes are organized jointly with other international organizations. Some take the form of training courses. In other cases individual assistance might be offered.

The subjects can be anything from help in dealing with negotiations to join the WTO and implementing WTO commitments to guidance in participating effectively in multilateral negotiations. Developing countries, especially the least-developed among them, are helped with trade and tariff data relating to their own export interests and to their participation in WTO bodies.

ON THE WEBSITE:



www.wto.org > trade topics > development > WTO Training Institute

Specialized help for exporting: the International Trade Centre

The International Trade Centre was established by GATT in 1964 at the request of the developing countries to help them promote their exports. It is jointly operated by the WTO and the United Nations, the latter acting through UNCTAD (the UN Conference on Trade and Development).

The centre responds to requests from developing countries for assistance in formulating and implementing export promotion programmes as well as import operations and techniques. It provides information and advice on export markets and marketing techniques. It assists in establishing export promotion and marketing services, and in training personnel required for these services. The centre's help is freely available to the least-developed countries.

The WTO in global economic policy-making

An important aspect of the WTO's mandate is to cooperate with the International Monetary Fund, the World Bank and other multilateral institutions to achieve greater coherence in global economic policy-making. A separate Ministerial Declaration was adopted at the Marrakesh Ministerial Meeting in April 1994 to underscore this objective.

The declaration envisages an increased contribution by the WTO to achieving greater coherence in global economic policy-making. It recognizes that different aspects of economic policy are linked, and it calls on the WTO to develop its cooperation with the international organizations responsible for monetary and financial matters — the World Bank and the International Monetary Fund.

The declaration also recognizes the contribution that trade liberalization makes to the growth and development of national economies. It says this is an increasingly important component in the success of the economic adjustment programmes which many WTO members are undertaking, even though it may often involve significant social costs during the transition.

Transparency (1): keeping the WTO informed

Often the only way to monitor whether commitments are being implemented fully is by requiring countries to notify the WTO promptly when they take relevant actions. Many WTO agreements say member governments have to notify the WTO Secretariat of new or modified trade measures. For example, details of any new anti-dumping or countervailing legislation, new technical standards affecting trade, changes to regulations affecting trade in services, and laws or regulations concerning the intellectual property agreement — they all have to be notified to the appropriate body of the WTO. Special groups are also established to examine new free-trade arrangements and the trade policies of countries joining as new members.

Transparency (2): keeping the public informed

The main public access to the WTO is the website, www.wto.org. News of the latest developments are published daily. Background information and explanations of a wide range of issues — including “Understanding the WTO” — are also available. And those wanting to follow the nitty-gritty of WTO work can consult or download an ever-increasing number of official documents, now over 150,000, in Documents Online.



On 14 May 2002, the General Council decided to make more documents available to the public as soon as they are circulated. It also decided that the minority of documents that are restricted should be made public more quickly — after about two months, instead of the previous six. This was the second major decision on transparency. On 18 July 1996, the General Council had agreed to make more information about WTO activities available publicly and decided that public information, including derestricted WTO documents, would be accessible on-line.

The objective is to make more information available to the public. An important channel is through the media, with regular briefings on all major meetings for journalists in Geneva — and increasingly by email and other means for journalists around the world.

Meanwhile, over the years, the WTO Secretariat has enhanced its dialogue with civil society — non-governmental organizations (NGOs) interested in the WTO, parliamentarians, students, academics, and other groups.

In the run-up to the Doha Ministerial Conference in 2001, WTO members proposed and agreed on several new activities involving NGOs. In 2002, the WTO Secretariat increased the number of briefings for NGOs on all major WTO meetings and began listing the briefing schedules on its website. NGOs are also regularly invited to the WTO to present their recent policy research and analysis directly to member governments.

A monthly list of NGO position papers received by the Secretariat is compiled and circulated for the information of member governments. A monthly electronic news bulletin is also available to NGOs, enabling access to publicly available WTO information.

ON THE WEBSITE:

www.wto.org > community/forums



Current WTO members

153 governments, since July 2008, with date of membership ("**g**" = the 51 original GATT members who joined after 1 January 1995; "**n**" = new members joining the WTO through a working party negotiation):

Albania 8 September 2000 (n)
Angola 1 December 1996 (g)
Antigua and Barbuda 1 January 1995
Argentina 1 January 1995
Armenia 5 February 2003 (n)
Australia 1 January 1995
Austria 1 January 1995
Bahrain 1 January 1995
Bangladesh 1 January 1995
Barbados 1 January 1995
Belgium 1 January 1995
Belize 1 January 1995
Benin 22 February 1996 (g)
Bolivia, Plurinational State of 13 September 1995 (g)
Botswana 31 May 1995 (g)
Brazil 1 January 1995
Brunei Darussalam 1 January 1995
Bulgaria 1 December 1996 (n)
Burkina Faso 3 June 1995 (g)
Burundi 23 July 1995 (g)
Cambodia 13 October 2004 (n)
Cameroon 13 December 1995 (g)
Canada 1 January 1995
Cape Verde 23 July 2008
Central African Republic 31 May 1995 (g)
Chad 19 October 1996 (g)
Chile 1 January 1995
China 11 December 2001 (n)
Colombia 30 April 1995 (g)
Congo 27 March 1997 (g)
Costa Rica 1 January 1995
Côte d'Ivoire 1 January 1995
Croatia 30 November 2000 (n)
Cuba 20 April 1995 (g)
Cyprus 30 July 1995 (g)
Czech Republic 1 January 1995
Democratic Republic of the Congo 1 January 1997 (g)
Denmark 1 January 1995
Djibouti 31 May 1995 (g)
Dominica 1 January 1995
Dominican Republic 9 March 1995 (g)
Ecuador 21 January 1996 (n)
Egypt 30 June 1995 (g)
El Salvador 7 May 1995 (g)
Estonia 13 November 1999 (n)
European Union 1 January 1995
Fiji 14 January 1996 (g)
Finland 1 January 1995
Former Yugoslav Republic of Macedonia 4 April 2003 (n)
France 1 January 1995

Gabon 1 January 1995
Gambia 23 October 1996 (g)
Georgia 14 June 2000 (n)
Germany 1 January 1995
Ghana 1 January 1995
Greece 1 January 1995
Grenada 22 February 1996 (g)
Guatemala 21 July 1995 (g)
Guinea Bissau 31 May 1995 (g)
Guinea 25 October 1995 (g)
Guyana 1 January 1995
Haiti 30 January 1996 (g)
Honduras 1 January 1995
Hong Kong, China 1 January 1995
Hungary 1 January 1995
Iceland 1 January 1995
India 1 January 1995
Indonesia 1 January 1995
Ireland 1 January 1995
Israel 21 April 1995 (g)
Italy 1 January 1995
Jamaica 9 March 1995 (g)
Japan 1 January 1995
Jordan 11 April 2000 (n)
Kenya 1 January 1995
Korea 1 January 1995
Kuwait 1 January 1995
Kyrgyz Republic 20 December 1998 (n)
Latvia 10 February 1999 (n)
Lesotho 31 May 1995 (g)
Liechtenstein 1 September 1995 (g)
Lithuania 31 May 2001 (n)
Luxembourg 1 January 1995
Macao, China 1 January 1995
Madagascar 17 November 1995 (g)
Malawi 31 May 1995 (g)
Malaysia 1 January 1995
Maldives 31 May 1995 (g)
Mali 31 May 1995 (g)
Malta 1 January 1995
Mauritania 31 May 1995 (g)
Mauritius 1 January 1995
Mexico 1 January 1995
Moldova 26 July 2001 (n)
Mongolia 29 January 1997 (n)
Morocco 1 January 1995
Mozambique 26 August 1995 (g)
Myanmar 1 January 1995
Namibia 1 January 1995
Netherlands 1 January 1995
Nepal 23 April 2004 (n)
New Zealand 1 January 1995
Nicaragua 3 September 1995 (g)
Niger 13 December 1996 (g)

Nigeria 1 January 1995
Norway 1 January 1995
Oman 9 November 2000 (n)
Pakistan 1 January 1995
Panama 6 September 1997 (n)
Papua New Guinea 9 June 1996 (g)
Paraguay 1 January 1995
Peru 1 January 1995
Philippines 1 January 1995
Poland 1 July 1995 (g)
Portugal 1 January 1995
Qatar 13 January 1996 (g)
Romania 1 January 1995
Rwanda 22 May 1996 (g)
Saint Kitts and Nevis 21 February 1996 (n)
Saint Lucia 1 January 1995
Saint Vincent & the Grenadines 1 January 1995
Saudi Arabia, Kingdom of 11 December 2005
Senegal 1 January 1995
Sierra Leone 23 July 1995 (g)
Singapore 1 January 1995
Slovak Republic 1 January 1995
Slovenia 30 July 1995 (g)
Solomon Islands 26 July 1996 (g)
South Africa 1 January 1995
Spain 1 January 1995
Sri Lanka 1 January 1995
Suriname 1 January 1995
Swaziland 1 January 1995
Sweden 1 January 1995
Switzerland 1 July 1995 (g)
Chinese Taipei 1 January 2002 (n)
Tanzania 1 January 1995
Thailand 1 January 1995
Togo 31 May 1995 (g)
Trinidad and Tobago 1 March 1995 (g)
Tonga 27 July 2007
Tunisia 29 March 1995 (g)
Turkey 26 March 1995 (g)
Uganda 1 January 1995
Ukraine 16 May 2008
United Arab Emirates 10 April 1996 (g)
United Kingdom 1 January 1995
United States 1 January 1995
Uruguay 1 January 1995
Venezuela, Bolivarian Republic of 1 January 1995
Viet Nam 11 January 2007
Zambia 1 January 1995
Zimbabwe 3 March 1995 (g)

Observers

Afghanistan
 Algeria
 Andorra
 Azerbaijan
 Bahamas
 Belarus
 Bhutan
 Bosnia and Herzegovina
 Comoros
 Equatorial Guinea
 Ethiopia
 Holy See (Vatican)
 Iran
 Iraq
 Kazakhstan
 Lao People's Democratic Republic
 Lebanese Republic
 Libya
 Montenegro
 Republic of Liberia
 Russian Federation
 Samoa

Sao Tome and Principe
 Serbia
 Seychelles
 Sudan
 Syrian Arab Republic
 Tajikistan
 Uzbekistan
 Vanuatu
 Yemen

Note: With the exception of the Holy See, observers must start accession negotiations within five years of becoming observers.

