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THE DRAFT FINAL ACT OF THE URUGUAY ROUND PRESS SUMMARY

The 500-page document entitled "Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations" was tabled in Geneva on 20 December 1991. Twenty-eight legal texts spell out the results of five years of negotiation since the Round was launched in Punta del Este, Uruguay, in September 1986.

Essentially, all the results of the Round, in each area of the Punta del Este Ministerial Declaration, are contained in the Draft Final Act with two important exceptions. The first is the results of the "market access negotiations" in which individual participants will make binding commitments to reduce specific tariff and non-tariff barriers to merchandise trade. These concessions, which are subject to continuing negotiations, would ultimately be recorded in national schedules adopted along with the other results of the Round and will form an integral part of the Final Act. The second is the "initial commitments" being negotiated in the context of the new General Agreement on Trade in Services. These market access and other commitments would also be recorded in national schedules.

Of the various texts contained in the Draft Final Act, the vast majority are the result of consensus among the negotiators. In a very small number of cases, the negotiating groups' chairmen were required to provide what they judged to be the most balanced solutions based upon the intensive negotiations and consultations held up to December 1991. Even this arbitration was undertaken in the context of agreed negotiating procedures.

Since December 1991, a legal drafting group, set up by the Trade Negotiations Committee of the Uruguay Round, has been tidying up the various texts, making them legally consistent with each other and developing certain of the institutional provisions. However, no further collective negotiations have taken place on the substance of the texts.

The following pages contain summaries of all the components of the Draft Final Act. These summaries are presented for the guidance of the media and have no legal status. Nor do they prejudice the positions of individual governments participating in the Uruguay Round.

NB: All dates in the Draft Final Act, which have been quoted in the summaries, were based on the expectation that the Uruguay Round Agreements would come into force on 1 January 1993.

INDEX

Rules of Origin	4
Preshipment Inspection	4
Anti-dumping	5
Subsidies and Countervailing Measures	6
Technical Barriers to Trade	8
Import Licensing	8
Customs Valuation	9
Government Procurement	9
Safeguards	10
GATT Articles	12
Trade Related Investment Measures	13
Agriculture	13
Textiles and Clothing	16
Trade in Services	17
Trade Related Aspects of Intellectual Property Rights	21
Dispute Settlement	24
Functioning of the GATT System	25
Multilateral Trade Organization	27

Rules of Origin

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

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

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

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

Preshipment Inspection

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

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

The obligations of exporting contracting parties towards PSI users include non-discrimination in the application of domestic laws and regulations, prompt

publication of such laws and regulations and the provision of technical assistance where requested.

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

Anti-dumping Code

The new Anti-dumping Agreement seeks to rectify many difficulties of interpretation and operation which governments have experienced in the current agreement; both affecting those countries making use of anti-dumping rules and those finding their exports affected by anti-dumping action.

In Article VI of the General Agreement, GATT members recognize that dumping is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. The draft agreement considers a product as being "dumped", that is, introduced into the commerce of another country at less than its normal value, if the export price of the product is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. Where there are no domestic sales of the like product, the agreement lays down criteria for comparison with exports to a third market or a constructed price based upon production costs plus a reasonable amount for administrative, selling and other costs and for profits.

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

Clear-cut procedures have been established on how anti-dumping cases are to be initiated and how subsequent investigations are to be conducted. Conditions for ensuring that all interested parties are given an opportunity to present evidence are set out and other new provisions cover provisional measures, agreements on undertakings, conditions for retroactive duties, duration and review. A new "sunset clause" provides that any anti-dumping duty shall be terminated on a date not later than five years from its imposition, unless the authorities determine in a review that

the continued imposition of the duty is necessary to prevent the continuation or recurrence of injury by dumped imports.

The draft agreement provides that any anti-dumping investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is insufficient evidence of either dumping or of injury. A new provision requires the immediate termination of the investigation in cases where the authorities determine that the margin of dumping is *de minimis* (the margin of dumping is less than 2 per cent, expressed as a percentage of the normal value of the product) or that the volume of dumped imports, actual or potential, or the injury is negligible.

Another feature of the draft agreement which was not present in previous anti-dumping agreements is the measures to prevent circumvention of definitive anti-dumping duties. Thus, authorities may include, after meeting detailed criteria set out in the agreement, within the scope of application of an existing definitive anti-dumping duty on an imported product those parts or components destined for assembly or completion in the importing country.

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

Subsidies and Countervailing Measures

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

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

The agreement establishes three categories of subsidies. First, it deems the following subsidies to be "prohibited": those contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance; and those contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods. Prohibited subsidies are subject to new dispute settlement procedures, including a time limit of 90 days for action by a Committee on

Subsidies and Countervailing Measures. Where the Committee finds that the subsidy is indeed prohibited, it must recommend its immediate withdrawal or, if this recommendation is not followed, to authorize the complaining signatory to take countermeasures.

The second category is "actionable" subsidies. The draft agreement stipulates that no signatory should cause, through the use of subsidies, adverse effects to the interests of other signatories, such as injury to domestic industry of another signatory, nullification or impairment of benefits accruing directly or indirectly to other signatories under the General Agreement (in particular the benefits of bound tariff concessions), and serious prejudice to the interests of another signatory. "Serious prejudice" shall be presumed to exist when the total *ad valorem* subsidization of a product exceeds 5 per cent. Members affected by actionable subsidies may seek remedy from the Committee, which is given 120 days to report its conclusions on disputes involving this type of subsidies.

The third category involves non-actionable subsidies, which could either be non-specific subsidies, or specific subsidies involving assistance to research and development or assistance to disadvantaged regions. Where another signatory believes that an otherwise non-actionable subsidy is resulting in serious adverse effects to a domestic industry, it may bring a case to the Committee.

One part of the draft agreement concerns the use of countervailing measures on subsidized imported goods. It sets out disciplines on the initiation of countervailing cases, investigations by national authorities and rules of evidence to ensure that all interested parties can present information and argument. Rules on the calculation of the amount of a subsidy are outlined as is the basis for the determination of injury to the domestic industry. The draft agreement would require that all relevant economic factors be taken into account in assessing the state of the industry and that a causal link be established between the subsidized imports and the alleged injury. Countervailing investigations shall be terminated immediately in cases where the amount of a subsidy is *de minimis* or where the volume of subsidized imports, actual or potential, or the injury is negligible (the subsidy is less than 1 per cent *ad valorem*). Except under exceptional circumstances, investigations shall be concluded within one year after their initiation. All countervailing duties shall be terminated within 5 years of their imposition unless the authorities determine on the basis of a review that there is "good cause" for continuation of the duty.

The agreement recognizes that subsidies may play an important rôle in economic development programmes of developing countries, and in the transformation of centrally-planned economies to market economies. Least-developed countries and developing countries that have less than \$1,000 per capita GNP are thus exempted from disciplines on prohibited subsidies. For other developing countries, the disciplines would take effect eight years after the entry into force of the agree-

ment. In addition, these countries should phase-out export subsidies during the same period. Countervailing investigation of a product originating from a developing-country signatory would be terminated if the overall level of subsidies does not exceed 2 per cent of the value of the product, or if the volume of the subsidized imports represents less than 4 per cent of the total imports for the like product in the importing signatory. For countries in the process of transformation from a centrally-planned into a market economy, prohibited subsidies shall be phased out within a period of seven years from the date of entry into force of the agreement.

Technical Barriers to Trade

This agreement would extend and clarify the Agreement on Technical Barriers to Trade reached in the Tokyo Round. It seeks to ensure that technical regulations and standards, as well as testing and certification procedures, do not create unnecessary obstacles to trade. However, it specifically recognizes that countries should not be prevented from, among other things, taking measures for the protection of human, animal and plant life or health or of the environment.

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

Import Licensing

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

With respect to automatic licensing procedures, the revised agreement sets out criteria under which they are assumed not to have trade restrictive effects. With respect to non-automatic licensing procedures, their administrative burden for importers and exporters should be limited to what is absolutely necessary to adminis-

ter the measures to which they apply. The revised agreement also sets a maximum of 60 days for applications to be considered.

Customs Valuation

The Decision on Customs Valuation would give customs administrations the chance to request further information of importers where they have reason to doubt the accuracy of the declared value of imported goods. If the administration maintains a reasonable doubt, despite any additional information, it may be deemed that the customs value of the imported goods cannot be determined on the basis of the declared value, and customs would need to establish the value taking into account the provisions of the agreement. It is also envisaged, in an accompanying text, that the Committee on Customs Valuation in GATT will take up a number of issues bearing on the difficulties faced by developing countries in acceding to the agreement.

Government Procurement

The draft Final Act contains an agreement related to accession procedures to the Government Procurement Agreement which is designed to facilitate the membership of developing countries. It envisages consultations between the existing members and applicant governments. These would be followed by the establishment of accession working parties to examine the offers made by applicant countries (in other words, the public entities whose procurement will be opened up to international competition) as well as the export opportunities for the applicant country in the markets of existing signatories.

This agreement should be distinguished from the ongoing negotiations under the Agreement on Government Procurement, whose objectives are far more ambitious. These negotiations are not formally part of the Uruguay Round but they are expected to finish within the same timescale and for at least some participants their results are expected to add an important element to the liberalization of market access achieved in the Round. The Government Procurement negotiations have three objectives: to extend the coverage of the Agreement to services (at present it covers only goods); to broaden the application of the Agreement by bringing in sub-central levels of government and certain public utilities; and to improve the existing text of the Agreement.

Safeguards

Article XIX of the General Agreement allows a GATT member to take a "safeguard" action to protect a specific domestic industry from an unforeseen build-up of imports of any product which is causing, or which is likely to cause, serious injury to the industry. The central condition for a safeguard action is that the importing country should determine that the product is being imported in such increased quantities, and under such conditions, as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

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

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

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

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

In principle, safeguard measures would be applied irrespective of source. The draft envisages consultations, among contracting parties with a substantial interest,

on the allocation of a quota. Normally, allocation of shares would be on the basis of proportion of total quantity or value of the imported product over a previous representative period. However, it would be possible for the importing country to depart from this approach if it could demonstrate, in consultations under the auspices of the Safeguards Committee, that certain contracting parties had increased their imports disproportionately in relation to the total increase and that such a departure would be justified and equitable to all suppliers.

The draft agreement lays down time limits for safeguard measures. Generally, the duration of a measure should not exceed four years though this could be extended, subject to confirmation of continued necessity by the competent national authorities, up to a maximum of eight years. Any measure imposed for a period greater than one year should be progressively liberalized during its lifetime. No safeguard measure could be applied again to a product that had been subject to such action for a period equal to the duration of the previous measure, or at least two years. A safeguard measure with a duration of 180 days or less may be applied again to the import of a product if at least one year had elapsed since the date of introduction of the measure on that product, and if such a measure had not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

The agreement envisages consultations on compensation for safeguard measures or, where consultations are not successful, the withdrawal of equivalent concessions by affected contracting parties. However, there would be no right to withdraw concessions for an initial period of three years if the safeguard measure conformed to the provisions of the agreement.

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

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

GATT Articles

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

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

Article XVII - State-trading Enterprises. Agreement defining State-trading enterprises and the GATT disciplines applying to them, and increasing surveillance of their activities through stronger notification and review procedures.

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

Article XXV:5 - Waivers. Agreement of new procedures for the granting of waivers from GATT disciplines, to specify termination dates for any waivers to be granted in the future, and to fix expiry dates for existing waivers.

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

Article XXXV - Non-application of the General Agreement. Agreement to allow a contracting party or a newly acceding country to invoke GATT's non-application provisions *vis-à-vis* the other party after having entered into tariff negotiations with each other.

Articles XII and XVIII:B - Balance-of-payments provisions. Agreement that contracting parties imposing restrictions for balance-of-payments purposes should do so in the least trade-disruptive manner and should favour price-based measures, like import surcharges and import deposits, rather than quantitative re-

strictions. Agreement also on procedures for consultations by the GATT Balance-of-Payments Committee as well as for notification of BOP measures.

Trade Related Investment Measures

The draft agreement recognizes that certain investment measures restrict and distort trade. It provides that no contracting party shall apply any TRIM inconsistent with Articles III (national treatment) and XI (prohibition of quantitative restrictions) of the GATT. To this end, an illustrative list of TRIMs agreed to be inconsistent with these articles is appended to the agreement. The list includes measures which require particular levels of local procurement by an enterprise ("local content requirements") or which restrict the volume or value of imports such an enterprise can purchase or use to an amount related to the level of products it exports ("trade balancing requirements"). Both these examples are seen to be contrary to Article III:4. The latter example is also regarded as contrary to Article XI:1 as are certain forms of restrictions on access to foreign exchange and certain export restrictions.

The agreement would require mandatory notification of all non-conforming TRIMs and their elimination within two years for developed countries, within five years for developing countries and within seven years for least-developed countries. It would establish a Committee on TRIMs which would, among other things, monitor the implementation of these commitments.

Agriculture

The draft text on agriculture has four elements: a basic agreement supplemented by an agreement on the modalities for establishing specific binding commitments under the reform programme, a decision on the application of sanitary and phytosanitary measures and a declaration on measures to assist net food-importing developing countries.

In market access, the proposals envisage the tariffication of all non-tariff measures. The resulting tariffs together with all existing customs duties, would be subject to a 36 per cent reduction between the years 1993 and 1999, with a minimum cut of 15 per cent reduction for each individual tariff line. All agricultural customs duties would be bound in the GATT. In case of an import surge or shipments at prices below a certain reference level, importing countries could impose additional duties under a special safeguard clause. Current access opportunities would be maintained. Where there are currently no significant imports, minimum access

opportunities of 3 per cent of domestic consumption would be established, expanding to 5 per cent by 1999.

Domestic support measures would be divided into trade-distorting support ("amber policies") and policies which have at most a minimal impact on trade ("green policies" or policies in the "Green Box"). The Green Box covers a wide range of support measures, including general government services, for example in the areas of research, disease control, infrastructure, environment protection and food security; it also includes direct payments to producers, for example certain ("decoupled") forms of income support, structural adjustment assistance, direct payments under environmental programmes and under regional assistance programmes. Only amber policies would be subject to reduction commitments. The package thus provides incentives to switch to forms of support which are non-trade distortive.

The commitments to reduce amber policies would be expressed in the form of an aggregate measurement of support (AMS), in which for each basic agricultural product a single figure for the value of all forms of support subject to reduction would be calculated. Amber support would be reduced by 20 per cent between 1993 and 1999. Where the calculation of an AMS figure is not practicable, but where trade-distorting support exists, equivalent commitments would be undertaken on a product-specific basis.

The draft text contains a listing of export subsidies subject to reduction commitments. The reductions would take place between the years 1993 and 1999 and would amount to 36 per cent in terms of budgetary outlays and 24 per cent in terms of quantities of subsidized exports. There would also be an undertaking not to introduce or re-introduce export subsidies on products on which export subsidies had not been granted during the base period. Further, the agreement contains provisions aimed at preventing the circumvention of the export competition commitments, for example by setting out criteria for international food aid donations.

The least-developed countries would be exempt from all reduction commitments. The reduction commitments for other developing countries are less severe, specifically not less than two-thirds of the reductions mentioned above. The implementation period could be extended to a maximum of 10 years. In recognizing their need to encourage agricultural and rural development, developing countries are exempted from reduction commitments with respect to generally available input subsidies and investment aids.

This package is conceived as a first step in a long-term reform process designed to establish a fair and market-oriented agricultural trading system, as agreed by Ministers at the Mid-Term Review of the Uruguay Round. The continuation clause would ensure that the reform will be ongoing. Experience during the imple-

mentation period of the Uruguay Round package would be monitored and evaluated by a newly created Agriculture Committee. Certain "peace" provisions are designed to contribute to a smooth implementation of the reform programme.

It is recognized that during the reform programme least-developed and net food-importing developing countries may experience negative effects with respect to supplies of food imports on reasonable terms and conditions - this would be especially the case as the levels of export subsidies fell. Therefore, a special declaration sets out objectives with regard to the provision of food aid, the provision of basic foodstuffs in full grant form and aid for agricultural development. It also refers to the possibility of assistance from the International Monetary Fund and the World Bank with respect to the short-term financing of commercial food imports.

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

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

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

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

Textiles and Clothing

The object of this negotiation has been to secure the eventual integration of the textiles and clothing sector - where much of the trade is currently subject to bilateral quotas negotiated under the Multifibre Arrangement (MFA) - into the GATT on the basis of strengthened GATT rules and disciplines. The basis for an agreement was sent to the Brussels Ministerial meeting but it took a long series of detailed negotiations in the latter part of 1991 for a comprehensive text to emerge which commanded the support of both exporters and importers.

Integration of the sector into the GATT would take place as follows: first, assuming implementation of Uruguay Round commitments on 1 January 1993, on that day, each party would integrate into the GATT products from the specific list in the agreement which accounted for not less than 12 per cent of its total volume of imports in 1990. Discussions are continuing on a formula for integrating a further 4 per cent at the outset. Integration means that trade in these products will be governed by the general rules of GATT.

At the beginning of Phase 2, on 1 January 1996, products which accounted for not less than 17 per cent of 1990 imports would be integrated. On 1 January 2000, products which accounted for not less than 18 per cent of 1990 imports would be integrated. All remaining products would be integrated at the end of the transition period on 1 January 2003. At each of the first three stages, products should be chosen from each of the following categories: tops and yarns, fabrics, made-up textile products, and clothing.

All MFA restrictions in place on 31 December 1992 would be carried over into the new agreement and maintained until such time as they are removed or the products integrated into GATT. For products remaining under restraint, at whatever stage, the agreement lays down a formula for increasing the existing growth rates. Thus, during Stage 1, and for each restriction previously under MFA bilateral agreements in force for 1992, annual growth should be not less than 16 per cent higher than the growth rate established for the restriction itself. For Stage 2 (1996 to 1999 inclusive), annual growth rates should be 25 per cent higher than the Stage 1 rates. For Stage 3 (2000 to 2002 inclusive), annual growth rates should be 27 per cent higher than the Stage 2 rates.

While the agreement focuses largely on the phasing-out of MFA restrictions, it also recognizes that members maintain non-MFA restrictions not justified under a GATT provision. These would also be brought into conformity with GATT within one year of the entry into force of the agreement or phased out progressively during a period not exceeding the duration of the agreement (that is, by 2003).

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

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

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

A Textiles Monitoring Body (TMB) would be established to oversee the implementation of commitments and to conduct a major review before the end of each stage. The agreement also has provisions which provide special treatment to certain categories of countries - for example, those which have not been MFA members since 1986, new entrants, small suppliers, and least-developed countries.

Trade in Services

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

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

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

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

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

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

While parties are normally obliged not to restrict international transfers and payments for current transactions relating to commitments under the agreement,

there are provisions allowing limited restrictions in the event of balance-of-payments difficulties. However, where such restrictions are imposed they would be subject to conditions; including, that they are non-discriminatory, that they avoid unnecessary commercial damage to other parties and that they are of a temporary nature.

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

Part III contains provisions on market access and national treatment which would not be general obligations but would be commitments made in national schedules. Thus, in the case of market access, each party "shall accord services and service providers of other Parties treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedule". The intention of the market-access provision is to progressively eliminate the following types of measures: limitations on numbers of service providers, on the total value of service transactions or on the total number of service operations or people employed. Equally, restrictions on the kind of legal entity or joint venture through which a service is provided or any foreign capital limitations relating to maximum levels of foreign participation are to be progressively eliminated.

The national-treatment provision contains the obligation to treat foreign service suppliers and domestic service suppliers in the same manner. However, it does provide the possibility of different treatment being accorded the service providers of other parties to those accorded to domestic service providers. However, if this is the case then the conditions of competition should not, as a result, be modified in favour of the domestic service providers.

Part IV of the agreement establishes the basis for progressive liberalization in the services area through successive rounds of negotiations and the development of national schedules. It also permits, after a period of three years, parties to withdraw or modify commitments made in their schedules. Where commitments are modified or withdrawn, negotiations should be undertaken with interested parties to agree on compensatory adjustments. Where agreement cannot be reached, compensation would be decided by arbitration.

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

The first of the annexes to the agreement concerns the movement of labour. It permits parties to negotiate specific commitments applying to the movement of

people providing services under the agreement. It requires that people covered by a specific commitment shall be allowed to provide the service in accordance with the terms of the commitment. Nevertheless, the agreement would not apply to measures affecting citizenship, residence or employment on a permanent basis.

The annex on financial services (largely banking and insurance) lays down the right of parties, notwithstanding other provisions, to take prudential measures, including for the protection of investors, deposit holders, policy holders, and to ensure the integrity and stability of the financial system. However, a further draft understanding on financial services would allow those participants who choose to do so to take on alternative commitments to those on market access and national treatment in the agreement itself. With respect to market access, the understanding contains more detailed obligations on, among other things, monopoly rights, cross-border trade (certain insurance and reinsurance policy writing as well as financial data processing and transfer), the right to establish or expand a commercial presence, and the temporary entry of personnel. The provisions on national treatment refer explicitly to access to payments and clearing systems operated by public entities and to official funding and refinancing facilities. They also relate to membership of, or participation in, self-regulatory bodies, securities or futures exchanges and clearing agencies.

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

The annex on air-transport services, some technical aspects of which are still under review, excludes from the agreement's coverage traffic rights (largely bilateral air-service agreements conferring landing rights) and directly related activities which might affect the negotiation of traffic rights. Nevertheless, the annex, in its current form, also states that the agreement should apply to aircraft repair and maintenance services, the marketing of air-transport services and computer-reservation services. The operation of the annex would be reviewed at least every five years.

Trade Related Aspects of Intellectual Property Rights

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

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

Part II addresses each intellectual property right in succession. With respect to copyright, parties are required to comply with the substantive provisions of the Berne Convention for the protection of literary and artistic works, in its latest version (Paris 1971), though they will not be obliged to protect moral rights as stipulated in Article 6bis of that Convention. The draft ensures that computer programmes will be protected as literary works under the Berne Convention and lays down on what basis data bases should be protected by copyright. Important additions to existing international rules in the area of copyright and related rights are the provisions on rental rights. The draft requires authors of computer programmes and producers of sound recordings to be given the right to authorize or prohibit the commercial rental of their works to the public. A similar exclusive right applies to films where commercial rental has led to widespread copying which is materially impairing the right of reproduction. The draft also requires performers to be given protection from unauthorized recording and broadcast of live performances (bootlegging). The protection for performers and producers of sound recordings would be for 50 years. Broadcasting organizations would have control over the use that can be made of broadcast signals without their authorization. This right would last for 20 years.

With respect to trademarks and service marks, the agreement defines what types of signs must be eligible for protection as a trademark or service mark and what the minimum rights conferred on their owners must be. Marks that have be-

come well-known in a particular country shall enjoy additional protection. In addition, the agreement lays down a number of obligations with regard to the use of trademarks and service marks, their term of protection, and their licensing or assignment. For example, requirements that foreign marks be used in conjunction with local marks would, as a general rule, be prohibited.

In respect of geographical indications, the agreement lays down that all parties must provide means to prevent the use of any indication which misleads the consumer as to the origin of goods, and any use which would constitute an act of unfair competition. Any trademark which contains a geographical indication should be refused or invalidated if it is likely to mislead the public as to the true origin of the goods. A higher level of protection is provided for geographical indications for wines and spirits, which are protected even where there is no danger of the public's being misled as to the true origin. Furthermore, provision is made for further negotiations to establish a multilateral system of notification and registration of geographical indications for wines.

Industrial designs are also protected under the agreement for a period of 10 years. Owners of protected designs would be able to prevent the manufacture, sale or importation of articles bearing or embodying a design which is a copy of the protected design.

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

With respect to the protection of layout designs of integrated circuits, the draft agreement requires parties to provide protection on the basis of the Treaty on Intellectual Property in Respect of Integrated Circuits which was opened for signature in May 1989, but with a number of additions: protection must be available for a minimum period of 10 years, the rights must extend to articles incorporating infringing layout designs, innocent infringers must be allowed to use or sell stock in

hand or ordered before learning of the infringement (against a suitable royalty), and compulsory licensing and government use is only allowed under a number of strict conditions.

Trade secrets and know-how which have commercial value must be protected against breach of confidence and other acts contrary to honest commercial practices. Test data submitted to governments in order to obtain marketing approval for pharmaceutical or agricultural chemicals must also be protected against unfair commercial use.

The final section in this part of the agreement concerns anti-competitive practices in contractual licences. It provides for consultations between governments where there is reason to believe that licensing practices or conditions pertaining to intellectual property rights constitute an abuse of these rights and have an adverse effect on competition. Remedies against such abuses must be consistent with the other provisions of the agreement.

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

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

The agreement would establish a Council for Trade-Related Aspects of Intellectual Property Rights to monitor the operation of the agreement and govern-

ments' compliance with it. Dispute settlement would take place under the integrated GATT dispute-settlement procedures as revised in the Uruguay Round.

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

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

Dispute Settlement

The dispute settlement system of GATT has already been strengthened and streamlined as a result of reforms agreed following the Mid-Term Review Ministerial Meeting held in Montreal in December 1988. Disputes currently being dealt with by the Council are subject to these new rules. However, it was always understood that a far more comprehensive reform of the system would be evolved as part of the final package.

The rules and procedures for dispute settlement as they emerged from the Montreal Meeting apply only to disputes raised within the framework of GATT. The texts appearing in the Draft Final Act are, however, extending the scope of the dispute settlement mechanism to the whole of the agreements covered by the Agreements on the Multilateral Trade Organization. For this purpose, a Dispute Settlement body (DSB) will exercise the authority of the General Council and the Councils and Committees of the covered agreements.

The Understanding on Rules and Procedures Governing the Settlement of Disputes, that forms part of the draft Final Act, covers every aspect of dispute settlement procedures. It begins by emphasizing the importance of consultations in securing dispute resolution, requiring contracting parties to enter into consultation

within 30 days where requested to do so. Where consultations are denied, a complaining party may move directly to request a panel. Equally, if, after 60 days from the request for consultations, there is no settlement, then a party may request the establishment of a panel. Alternatively, the parties may voluntarily agree to pursue alternatives, such as good offices, conciliation or mediation.

However, where not settled through consultations, the majority of cases are heard by panels. The Understanding would require the establishment of a panel to take place, at the latest, at the DSB meeting following that at which a request is made unless the DSB decides by consensus not to do so. Its provisions set out standard terms of reference for panels and rules on their composition. Panels would normally consist of three persons of appropriate background and experience from countries not parties to the dispute. The Secretariat would maintain a list of candidates satisfying the criteria. Where the parties do not agree on the composition within 20 days of the establishment of the panel, it can be decided by the Director-General.

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

The concept of an appellate review is an important novel feature of the Understanding. An Appellate Body would be established, composed of seven members, three of whom would serve on any one case. Appellate Body members would serve four-year terms and would be persons of recognized authority, expert in law, international trade and GATT matters generally. They would be unaffiliated to any government but, together, would be broadly representative of membership.

An appeal would be limited to issues of law covered in the panel report and legal interpretations developed by the panel. Appellate proceedings would not exceed 60 days from the date a party formally notifies its intent to appeal. The resulting report would be adopted by the DSB and unconditionally accepted by the parties unless the DSB decides by consensus not to adopt it within 30 days following its issuance to the members.

Once a panel report or appellate body's report is adopted, the party concerned would have to inform a DSB meeting, held within 30 days, of its intentions with respect to implementation. If it were impracticable to comply immediately the party concerned would have a reasonable period of time to do so. This reasonable period can be decided in a number of ways. In any event, the DSB would keep the imple-

mentation under regular surveillance until the issue was resolved. If there is disagreement as to the existence or consistency of measures taken to comply with recommendations and rulings, the dispute shall be decided through recourse to the dispute-settlement procedures.

Further provisions set out rules for compensation or the suspension of concessions in the event of non-implementation of adopted recommendations and rulings. Within a specified time-frame, parties can enter into negotiations to agree mutually acceptable compensation. Where this has not been agreed, any party to the dispute may request authorization of the DSB to suspend concessions or other obligations to the other party concerned. The DSB would normally grant authorization within 30 days of the expiry of the agreed reasonable period of time for implementation. Where there is a disagreement about the proposed level of suspension, it can be referred to arbitration.

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

Special procedures for the least-developed countries are also set out, as are provisions on the use of arbitration, and the resolution of disputes which do not involve a violation of GATT obligations but where, nevertheless, a contracting party believes benefits are being nullified or impaired.

Functioning of the GATT System

A draft decision on the functioning of the GATT system would confirm the Trade Policy Review Mechanism, introduced at the time of the Mid-Term Review, encourage greater transparency in national trade policy-making and seek reform of notification requirements and procedures generally in the GATT. The draft decision also sets out concepts and proposals with respect to increasing the contribution of GATT to achieving greater coherence in global economic policy-making. Among other things, the text notes that greater exchange rate stability based on more orderly underlying economic and financial conditions should contribute to "the expansion of trade, sustainable growth and development, and the timely correction of external imbalances". It recognizes that while difficulties whose origins lie outside the trade field cannot be redressed through measures taken in the trade field alone, there are nevertheless interlinkages between the different aspects of economic policy. Therefore, GATT is called upon to develop its cooperation with the international organizations responsible for monetary and financial matters. In particular, the Director-General of GATT is called upon to review, with his opposite numbers in the World Bank and the International Monetary Fund, the implica-

tions of GATT's future responsibilities for its cooperation with the Bretton Woods institutions.

Multilateral Trade Organization

As agreed by the negotiating group on institutions, and since further developed in the legal drafting group, the draft of an agreement establishing the Multilateral Trade Organization (MTO) envisages a common institutional framework encompassing the GATT, as modified by the Uruguay Round, all agreements and arrangements concluded under its auspices and the complete results of the Uruguay Round. Its structure would be headed by a Ministerial Conference meeting at least once every two years. A General Council would be established to oversee the operation of the agreement and ministerial decisions on a regular basis. This General Council would itself enact as a Dispute Settlement Body and a Trade Policy Review Mechanism, both of which would concern themselves with the full range of trade issues covered by the MTO, and would establish subsidiary bodies such as a Goods Council, a Services Council and a TRIPs Council. The MTO framework would serve as a vehicle to ensure a "single undertaking approach" to the results of the Uruguay Round - thus, membership in the MTO would automatically entail taking on all the results of the Round without exception.