

## **5. MARITIME AND MULTIMODAL TRANSPORT**

### **UN Convention on a Code of Conduct for Liner Conferences, 1974**

This Convention, which came into force on 6 October 1983, establishes a number of rules concerning the operation of liner shipping, in particular as regards the loading rights of national shipping lines in respect of liner cargoes generated by their countries' foreign trade. As of 30 June 1995, it had 78 Contracting Parties.

### **UN Convention on Multimodal Transport of Goods, 1980**

This Convention, establishes an international legal regime for the contract for the international multimodal transport of goods. It needs 30 ratifications/accessions for its entry into force. As of 30 June 1995, it had been ratified or acceded to by the following seven States; Chile, Malawi, Mexico, Morocco, Rwanda, Senegal and Zambia. Another two countries—Norway and Venezuela, had signed the Convention subject to ratification.

### **UN Convention on Conditions for Registration of Ships, 1986**

This Convention contains a set of minimum conditions which should be applied and observed by States when accepting ships on their ship register. It defines the elements of the 'genuine link' that should exist between a ship and the State whose flag it flies and thus contains provisions for participation of the flag State in the ownership, manning and management of ships. The Convention also requires flag States to exercise effectively their jurisdiction and control over ships flying their flag. It also requires a flag State to establish a competent and adequate national maritime administration responsible for a number of specific tasks such as ensuring that a ship flying its flag complies with the State's laws and regulations concerning registration of ships and complies with applicable international rules and standards concerned with the safety of ships and persons on board and the prevention of pollution of the maritime environment. The Convention will enter into force 12 months after the date on which no less than 40 States, the combined tonnage of which amounts to at least 25 per cent of world tonnage as specified in annex III to the Convention, have become Contracting Parties to it. As of 15 June 1995, the following nine States had ratified/acceded to the Convention: Cote d'Ivoire, Egypt, Ghana, Haiti, Hungary, Iraq, Libyan Arab Jamahiriya, Mexico and Oman.

### **International Convention on Maritime Liens and Mortgages, 1993**

This Convention is intended to improve conditions for ship financing and the development of national merchant fleets and to promote international uniformity in the field of maritime liens and mortgages. It will enter into

force six months following the date on which 10 States have expressed their consent to be bound by it. By 15 June 1995, it had been ratified by Monaco and Tunisia. The States which have signed the Convention subject to ratification include Brazil, China, Denmark, Finland, Germany, Guinea, Morocco, Norway, Paraguay, and Sweden.

### **Review of the International Convention for the Unification of Certain Rules relating to the Arrest of Sea-Going Ships, 1991**

In May 1993, the United Nations/IMO Conference of Plenipotentiaries on Maritime Liens and Mortgages, having adopted the International Convention on Maritime Liens and Mortgages, 1993, adopted a resolution in which it recommended that "the relevant bodies of UNCTAD and IMO, in the light of the outcome of the Conference, reconvene the Joint Intergovernmental Group (JIG) with a view to examining the possible review of the International Convention for the Unification of Certain Rules relating to the Arrest of Sea-going Ships 1952". Accordingly the JIG of UNCTAD/IMO met in Geneva from 5 to 9 December 1994 in order to examine the aforesaid 1952 Convention. The JIG, having completed preliminary consideration of the subject, prepared a set of "Draft Articles for a Convention on the Arrest of Ships" (TD/B/CN.4/GE.2/3 Annex.II). The draft articles are based on the Draft Revision of the 1952 Convention prepared by the Comité Maritime International (CMI), the changes required as a result of the adoption of the International Convention on Maritime Liens and Mortgages, 1993 and the views expressed by the delegations during the session. The JIG was to continue the examination at its next session scheduled to be held in London in October 1995.

## **III. United Nations Industrial Development Organization (UNIDO)**

The work programme of UNIDO in the area of international trade law appears to be focussed on the preparation of guidelines, manuals and checklists of contractual clauses so as to assist parties from the developing countries in concluding industrial contracts. These may be enumerated as below:

- (1) Guidelines on the purchase, maintenance and operation of basic insurance coverage for processing plants in developing countries;
- (2) UNIDO Model form of agreement for the licensing of patents and know-how in the petrochemical industry, including annexures, an integrated commentary and alternative texts of some clauses;
- (3) Items which could be included in contractual arrangements for the setting up of a turnkey plant for the production of bulk drugs



(pharmaceutical chemicals) or intermediates included in the UNIDO List;

- (4) UNIDO Model form of licensing and engineering services agreement for the construction of a fertilizer plant;
- (5) UNIDO Model form of turnkey lump sum contract for the construction of a fertilizer plant;
- (6) UNIDO Model form of semi-turnkey contract for the construction of a fertilizer plant;
- (7) UNIDO Model form of cost-reimbursable contract for the construction of a fertilizer plant;
- (8) Guidelines for Development, Negotiation and Contracting of BOT Projects—These Guidelines will be structured in the following chapters: (i) Introduction to the BOT concept and strategy; (ii) Development phases of BOT arrangements; (iii) Major issues on designing, implementing and executing BOT strategies and projects; and (iv) Standard project agreement and Standard provisions for BOT contracts.
- (9) Manual on Technology Transfer Negotiations—This manual, expected to be brought out shortly, is intended to serve the purpose of a teaching tool for technology transfer negotiation courses for developing the negotiation skills of the developing country parties.

#### **IV. International Institute for the Unification of Private Law (UNIDROIT)**

The 74th session of the Governing Council of UNIDROIT was held in Rome from 29 March to 1 April 1995. At that session, the Governing Council considered the state of progress on the following substantive items in the programme of work of UNIDROIT:

1. Principles for international commercial contracts;
2. International protection of cultural property;
3. International aspects of security interests in mobile equipment;
4. Franchising;
5. Inspection agency contracts;
6. Civil liability connected with the carrying out of dangerous activities;
7. Legal issues connected with software;
8. Organization of an information system or databank on uniform law; and
9. Convening of a Congress or Meeting on uniform law.

#### **Principles of international commercial contracts**

The work on this project was completed in 1994 with the adoption of the final text of the UNIDROIT Principles of International Commercial Contracts. The Principles consist of a preamble and 119 articles divided into seven chapters (General provisions; Formation; Validity; Interpretation; Content; Performance; and Non-Performance). The chapter on performance contains a special section on hardship, while the chapter on non-performance deals with such questions as the right to performance, termination and damages. Each article is accompanied by a commentary, including illustrations, which form an integral part of the Principles. As such, the Principles constitute a system of rules of contract law specifically adapted to the special requirements of modern commercial practice and which may in a number of important ways be of service to the international community.

The English version of the Principles was published in June 1994 and the French version in July 1994. Spanish and Italian versions were published early in 1995 while German, Arabic, Chinese, Russian, Dutch and Hungarian versions were expected to be completed during 1995.

#### **International protection of cultural property**

The committee of governmental experts on the international protection of cultural property approved, at its fourth session held in Rome from 29 September to 8 October 1993, the text of the draft UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects. A diplomatic conference was convened by the Italian Government in Rome from 7 to 24 June 1995 to adopt and open for signature the UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects.

#### **International aspects of security interests in mobile equipment**

This item is under consideration of a study group designated by the Governing Council. The first session of the sub-committee of the study-group, set up pursuant to a decision taken by the Governing Council at its 72nd session, to prepare a first draft of the proposed Convention in this area was held in Rome from 14 to 16 February 1994. The sub-committee was able to reach a number of conclusions, which, while provisional in so far as they might need to be revised in the light of the sub-committee's consideration of the issues of enforcement and priorities, were nevertheless seen as providing a basis for the preparation of a first draft. The areas encompassed by these conclusions were the sphere of application of the proposed Convention, the setting up of an international registry and the conditions that should govern the recognition by the courts of Contracting



States of international interests in mobile equipment created in accordance with the proposed Convention. The sub-committee in terms of international interests in mobile equipment rather than, as hitherto, in terms of certain international aspects of security interests in mobile equipment. This change of direction was felt necessary in view of the sub-committee's desire to embrace in the same instrument both interests arising under security agreements and those arising under either a retention of title agreement or a leasing agreement with or without an option to purchase, for a term, say, three years.

Subsequently, a small drafting group, made up of one representative each of the English and French-speaking members of the sub-committee, met in Paris on 11 July 1994 in order to prepare a first set of draft articles designed to reflect the provisional conclusions reached by the sub-committee at its first session. The drafting group's efforts resulted in proposals for a first set of draft articles of a future UNIDROIT Convention on International Interests in Mobile Equipment. These were subsequently circulated for comment *inter alia* among all members of both the study group and the sub-committee.

The second session of the sub-committee was held in Rome from 29 November to 1 December 1994. It has before it the proposals for a first set of draft articles prepared by the drafting group as also the comments made by members of the study group/sub-committee and concerned international organizations. After dealing with the issues raised by the comments, which concerned the first test of internationality to be employed in the proposed Convention, the effect of making registration a condition for the application of the proposed Convention, the definition of mobile equipment for the purposes of the proposed Convention and the question of whether the proposed Convention should apply not only to the recognition and enforcement of international interests in mobile equipment but also to their creation, the sub-committee considered those elements still missing from the broad framework which it had embarked upon at its previous session, namely the shape of the rules on enforcement and priorities to be included in the future Convention. It was agreed that the question of whether supplementary rules should be prepared specifically for aircraft, should be deferred pending the submission of a paper by the aircraft industry.

The drafting group reconvened in May 1995 in order to complete the framework begun in 1994 in the light of the provisional conclusions reached by the sub-committee at its second session and the report to be submitted by the aircraft industry.

## Franchising

The UNIDROIT study group on franchising met in Rome from 16 to 18 May 1994. The terms of reference of the study group includes : to examine different aspects of franchising and in particular disclosure of information between parties before and after the conclusion of a franchise agreement and the effects of master franchise agreements on sub-franchise agreements, to make proposals to the Council and to indicate the form of any instrument or instruments that might be envisaged.

With reference to international franchising, the study group focussed on master franchise agreements. It considered in particular the nature of the relationship between the master franchise agreement and the sub-franchise agreements, applicable law and jurisdiction, the settlement of disputes, problems associated with the tripartite nature of the relationship between franchisor, sub-franchisor and sub-franchisees, particularly in relation to termination and disclosure.

In relation to domestic franchising, the study group concentrated on disclosure and examined the experiences of countries which have attempted some form of regulation in this area, the role of franchise associations and the importance of the codes of ethics adopted by these associations.

The study group reached the conclusion that none of these areas would lend itself to being dealt with by means of an international convention. However, there emerged a general consensus on the desirability of preparing a legal guide to international franchising, and in particular to master franchise agreements which are most commonly used in international franchising. The study group accordingly, decided to recommend to the Governing Council session that it agree to the preparation of a Legal Guide to Master Franchise Agreements.

## Inspection agency contracts

In pursuance of a decision by the Governing Council at its 72nd session, in June 1993, the secretariat of UNIDROIT had circulated a study on inspection agency contracts in the international sale of goods. A paper analyzing the comments and reactions received was drawn up by the secretariat for submission to the 73rd session of the Governing Council scheduled for March 1994. The Council requested the Secretariat to engage in a further round of consultations with the interested circles to enable it to decide on the prospects of any useful working being carried out in connection with this topic. Since reactions received from governments, inter-



governmental organizations and professional associations have shown a lack of interest as to the need for uniform rules in this area, the Governing Council at its 74th Session may decide to provisionally delete this item from the work programme.

#### **Civil liability connected with the carrying out of dangerous activities**

This topic was included in the programme of work of UNIDROIT following upon a reference from the Government of India in the wake of the Bhopal disaster. The Governing Council at its 73rd session (1994) asked the Secretariat to prepare a study designed to identify issues that might serve as a basis for possible measures designed to ensure compensation for personal injury to the victims of industrial accidents. The study was to be conducted within the following parameters: (i) It should be confined to the question of liability for personal injury; (ii) It should cover neither nuclear accidents nor accidents occurring in the transport of goods (both areas amply regulated by international legislation) and (iii) Any action that might be authorized in the light of such study would be undertaken on a step-by-step basis.

#### **Legal issues connected with software**

A study by the Secretariat had suggested UNIDROIT initiative in the area of specific commissioning of software programmes and the rights to use of the programme by the party commissioning the programme and the party developing it. Agreements concluded with a view to the preparation of such programmes are usually tailor-made from one agreement to another and their terms differ according to the experiences of the parties and their respective bargaining power. It was proposed by the Secretariat that UNIDROIT might usefully consider the drawing up of guidelines regarding the negotiation of such agreements, their purpose being to make the parties more aware of the differing legal consequences flowing from their choice of contractual provisions.

The Governing Council at its 72nd session in June 1993 took note of the Secretariat study but in view of the doubts expressed by certain members as to the usefulness of carrying out work on the subject at the present, as well as of the number of topics on which UNIDROIT was already engaged it was decided that further study should only be undertaken as and when the resources of the Institute would permit. At its 73rd session in 1994, the Governing Council noting the lack of any significant progress in relation to this item, decided to suspend any further study of the subject. The Governing Council, at its 74th session in March 1995, was to decide whether the item should be formally deleted from the programme.

#### **Organization of an Information System or Databank on Uniform Law**

This item which has remained on the work programme of the Institute for a number of years acquired a certain pre-eminence at the 73rd session of the Governing Council in 1994. The Governing Council at its 74th session in 1995 was to address itself to the proposal for the creation of an international foundation to finance, *inter alia*, the Institute's activity in regard to the dissemination of information concerning uniform law through the establishment of a databank. This databank is intended to include texts and materials relating to a large number of areas of uniform Law including, but not limited to arbitration, international sales, transport law, cultural property and private international law. It will also include not only the texts of international instruments, but also the status of ratifications of international conventions, reservations, case law and bibliographical references.

#### **Convening of a Congress or Meeting on Uniform Law**

Pursuant to a decision taken by the Governing Council at its 73rd session in March 1994, the Institute is organizing a meeting of international organizations at its headquarters in Rome on 2 and 3 February 1996 to examine the modalities for the establishment of a Databank on Uniform Law and to discuss the possibilities for a constructive and mutually beneficial cooperation between the Institute and the invited organizations. The AALCC had also been invited to participate in the aforesaid meeting but had to turn down the invitation due to budgetary constraints.



## B. WTO as a Framework Agreement and Code of Conduct for the World Trade

### Background

The Uruguay Round of Multilateral Trade Negotiations, launched in 1986, concluded on 15 April 1994, in Marrakesh (Morocco) with the signing of the Final Act embodying the results of that Round and opening for signature the Agreement establishing the World Trade Organization (WTO) to which all substantive agreements and understandings were annexed, as well as the Ministerial Declarations and Decisions adopted at Marrakesh and the Undertaking on Commitments on Financial Services to form an integral part thereof. It was also agreed that the WTO Agreement must be accepted as a package deal without any exception.

Of the 125 countries which formally participated in the Uruguay Round, 111 signed the Final Act and 104 signed the WTO Agreement, in many cases with the stipulation that their acceptance was subject to ratification.<sup>1</sup> Seven countries, Australia, Botswana, Burundi, India, Japan, Republic of Korea and USA, were unable to sign the WTO Agreement because of domestic legislative impediments.<sup>2</sup>

The most significant feature of the Final Act was that it represented a single undertaking integrating all the key agreements under the one umbrella, i.e. tariffs and now also service commitments as well as the substantive trade rules are part of a single package. This was reinforced

by the organizational and institutional framework which the WTO Agreement and the WTO, as the international economic organization, provide.

### Agreement Establishing the WTO

The Agreement is of a purely procedural and institutional character. It consists of a Preamble, sixteen Articles and four Annexes. The Agreement does not incorporate any substantive multilateral rules and disciplines, (concerning, for example, most-favoured-nation (MFN) treatment, non-discrimination, national treatment etc). The Preamble, a redraft of the GATT 1947 preamble, is the only place where substantive matters are touched upon. Apart from referring to the "optimal use of the world's resources in accordance with the objective of sustainable development", the Preamble recognizes the "need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development". It, in general terms, seeks to develop "an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade (GATT), the results of post trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations".

Multilateral Trade Agreements (MTAs) (the Multilateral Agreements on Trade in Goods, the General Agreement on Trade in Services and the Agreement on Trade-Related Aspects of Intellectual Property Rights) form Annexes 1A, 1B and 1C respectively, of the WTO Agreement. Annex 2 covers the Understanding on Rules and Procedures Governing the Settlement of Disputes, while Annex 3 contains the text of the Trade Policy Review Mechanism (TPRM). Plurilateral Trade Agreements (PTAs) are to be found in Annex 4. The Agreements in Annexes 1, 2 and 3 are binding on all members of the WTO, and, in fact, their acceptance alongwith specific schedules of concessions on goods and services, is a strict condition for membership of the WTO. Annex 4 agreements create rights and obligations only for members that have accepted them.

The WTO Agreement thus establishes the WTO to provide a common institutional framework for the conduct of trade among its Members in matters related to the agreements and associated legal instruments included in the abovementioned annexes. The functions of the WTO are : (1) facilitation of the implementation, administration and operation of the annexed agreements; (2) provision of a forum for negotiations among its members concerning their multilateral trade relations in matters dealt with under the annexed agreements, and of a forum for further negotiations among its members concerning their multilateral trade relations, as well

1. *International Legal Materials* Vol. XXXIII, No. 5 (September, 1994) p. 1132. The AALCC Member States signatory to the WTO Agreement include: Bahrain, Bangladesh, China, Cyprus, Egypt, Ghana, Indonesia, Kenya, Kuwait, Malaysia, Mauritius, Myanmar, Nigeria, Pakistan, Philippines, Qatar, Senegal, Singapore, Sri Lanka, Tanzania, Thailand, Turkey, Uganda and United Arab Emirates.

2. *Ibid.*



as a framework for the implementation of the results of such negotiations; (3) administration of the Dispute Settlement Body; (4) administration of the Trade Policy Review Mechanism; and (5) cooperation, as appropriate, with IMF and the World Bank, and its affiliated agencies with a view to achieving greater coherence in global economic policy-making.

The WTO organizational structure is open to all its members. It provides for membership of original and acceding members including procedures for admittance of further members. Under the Agreement, the Contracting Parties to GATT 1947 as of the date of entry into force of the WTO Agreement, and the European Community, which have accepted the WTO Agreement and the MTAs and which have submitted their schedules of concessions on goods (annexed to GATT 1994)<sup>3</sup> and services (annexed to GATS)<sup>4</sup> are eligible to become original members of the WTO. There is, however, an exemption from this basic requirement for the least developed countries (LDCs) which are only required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capacities (Article XI of WTO Agreement).

The WTO Agreement invests the organization with a proper organizational structure which includes plenary and executive organs, subsidiary committees and a properly regulated Secretariat under the charge of a Director-General. It consists of a Ministerial Conference meeting at least once in two years, and a General Council meeting as appropriate. The General Council has also been mandated to carry out the functions of the Dispute Settlement Body and the Trade Policy Review Mechanism. Other bodies include a Council for Trade in Goods, a Council for Trade in Services and a Council for TRIPs. The Ministerial Conference has been authorized to establish a Committee on Trade and Development, a Committee on Budget, Finance and Administration and a Committee on Balance of Payments Restrictions. These Councils are to function under their respective procedural rules, albeit subject to their approval by the General Council. The Councils have been empowered to establish subsidiary bodies. The Council for Trade in Goods will oversee the functioning of MTAs as set out in Annex 1A to the WTO Agreement, while the Council for Trade in Services will oversee the functioning of the GATS as set out in Annex 1B of the WTO Agreement. The Council for TRIPs will oversee the functioning of the Agreement on TRIPs, including Trade in Counterfeit Goods, included in Annex 1C to the WTO Agreement.

3. GATT-1994 forms Annex 1A to the WTO Agreement.

4. GATS, i.e. General Agreement on Trade in Services, forms Annex 1B to the WTO Agreement.

The budget and finances of the WTO are now formally regulated and so too are matters like voting. However, many features of the old GATT have been retained, for instance, the preferred mechanism for decision-making is still consensus and this carries over the practice adopted by GATT Contracting Parties over the course of almost 50 years. Voting is to be used for more formal measures like amendments to the WTO Agreement and the MTAs. In this respect, different procedures have been established depending on the issue involved. In general, decisions of the Ministerial Conference and the General Council that require a vote will be taken by a majority of votes cast. The Ministerial Conference and the General Council have the exclusive authority to adopt interpretations of the WTO Agreement and the MTAs. In the case of an interpretation of an MTA in Annex 1, the above organs shall exercise their authority on the basis of a recommendation by the Council overseeing the functioning of that Agreement. The decision to adopt an interpretation shall be taken by a three-fourths majority of the members.

As for waiver of an obligation imposed on a member by the WTO Agreement or any of the MTAs, which is considered by Article IX/3 as "exceptional circumstances", a majority of three-fourths of members vote is in general required, but in the case of a waiver concerning the WTO Agreement, it can be done only by the Ministerial Conference on the basis of consensus or a decision by a three-fourths majority once a given period of time for consideration has elapsed (90 days) without reaching the required consensus. A request for a waiver under the MTAs will be initially submitted to the respective Councils for their consideration over not more than 90 days, after which the relevant Council will report to the Ministerial Conference. A decision granting a waiver by the respective organs (Ministerial Conference) must highlight the exceptional circumstances, the terms and conditions of the waiver, and the date of its termination. Any waiver granted for more than one year must be reviewed annually by the Ministerial Conference which, on the basis of its findings, may extend, modify or terminate the waiver. Decisions on interpretations and waivers under the PTAs will be governed by the provisions of those agreements.

Other decision-making procedures include: (a) the WTO financial regulations and annual budget estimates will be adopted by the General Council by a two-thirds majority, comprising more than half of the WTO members; (b) decisions by the General Council acting as the Dispute Settlement Body will be taken only on the basis of consensus as foreseen in Article 2.4 of the Dispute Settlement Understanding; and (c) decisions on accessions to the WTO will be approved by the Ministerial Conference by a two-thirds majority of the WTO members.



Amendments to the provisions of the WTO Agreement (except Articles IX and X) and to the provisions of the MTAs in Annex 1A (except Articles I and II of GATT 1994) and Annex 1C (except Article II : 1 of GATS), and of the Agreement on TRIPs (except Article 4), that are of a nature that would alter the rights and obligations of the members will take effect for the members that have accepted them upon acceptance by two-thirds of the members and thereafter for each member upon acceptance by it. The Ministerial Conference may also decide by a three-fourths majority of the members that any amendment made effective under this general rule is of such a nature that any member which has not accepted it within a period specified by the Ministerial Conference in each case will be free to withdraw from the WTO or to remain a member with the consent of the Ministerial Conference. The same procedures will apply with respect to amendments to Parts I, II (except Article II : 1), and III of the GATS and the respective annexes.

As for amendments to the WTO Agreement, and other MTAs in Annex 1A and the Agreement on TRIPs, that are of a nature not requiring alteration of the rights and obligations of the members, the Ministerial Conference should first decide by a three-fourths majority whether the amendment is of such a nature. If it is, it will take effect for all members upon acceptance by two-thirds of the members.

Special procedures established to deal with amendments to the specific provisions of the WTO Agreement and the MTAs include:

- \*Amendments which require acceptance by all members involve (1) articles in the WTO Agreement dealing with decision-making and amendments; (2) Articles I and II of GATT 1994 (MFN treatment); (3) Article II : 1 of GATS (MFN treatment) and (4) Article 4 of the TRIPs Agreement (MFN treatment);

- \*Amendments to Parts IV, V and VI of GATS and the respective annexes will take effect for all members upon acceptance by two-thirds of the members;

- \*Amendments to the TRIPs Agreement meeting the requirements of its Article 71 (2) may be adopted by the Ministerial Conference without further formal acceptance procedures. This provision relates to amendments "merely serving the purpose of adjusting to higher levels of protection of intellectual property achieved, and in force, in other multilateral agreements and accepted under those agreements by all WTO members".

The WTO Agreement contains specific procedures in dealing with amendments concerning its Annex 2 (Dispute Settlement) and Annex 3

(TPRM). Decisions to approve amendments to Annex 2 will be made by consensus. They will take effect for all members upon approval by the Ministerial Conference, as will decisions to approve amendments to Annex 3.

As for Plurilateral Trade Agreements (PTAs) in Annex 4, it is stipulated (a) that the Ministerial Conference, at the request of the members parties to a trade agreement, may decide exclusively by consensus to add a PTA to Annex 4 or to delete a PTA from the same Annex; (b) that amendments to PTAs will be governed by their provisions.

The Agreement confers on the WTO a legal personality and obliges its Members to accord such legal capacity to it as may be necessary for the exercise of its functions. Another general obligation imposed upon each of the members is to "*ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements*" (Article XVI (4)). The Agreement also stipulates that in the event of a conflict between its provisions and those of any of the MTAs annexed to it, the provisions of the WTO Agreement will prevail.

The Agreement, together with the MTAs annexed to it, will remain open for acceptance for a period of two years following the date of the Agreement's entry into force, which is 1st January 1995. An acceptance after that date will be effective as from the 30th day following the deposit of the instrument of acceptance. A member which accepts the Agreement after its entry into force is required to implement those concessions and obligations in the MTAs that contain time periods starting with the entry into force of the WTO Agreement as if it had accepted the Agreement on the date of its entry into force. Withdrawal from the WTO Agreement applies also to the MTAs and takes effect after the expiration of six months from the date of receipt of the notification of withdrawal by the Director-General of the WTO.

### **Annexes to the WTO Agreement**

The WTO Agreement has four annexes : Annex 1 sets out three main agreements : the General Agreement on Tariffs and Trade 1994, the General Agreement on Trade in Services, and the Agreement on Trade-Related Aspects of Intellectual Property Rights. Annex 2 sets out the Understandings on the Rules and Procedures governing the Settlement of Disputes; Annex 3 includes the Trade Policy Review Mechanism (TPRM); and Annex 4 sets out the Plurilateral Trade Agreements (PTAs).



## ANNEX 1A : MULTILATERAL AGREEMENTS ON TRADE IN GOODS

### I/A/1 : The General Agreement on Tariffs and Trade 1994

The GATT 1994 is the key agreement on trade in goods in the WTO system and the heart of the Agreements in Annex 1A of the WTO Agreement. It is made up of the GATT 1947, various associated legal instruments, the most important ones being the protocols of accessions and the list of valid waivers, followed by various Understandings and the Marrakesh Protocol which incorporates the market access concessions on goods negotiated in the Uruguay Round. The schedules of concessions are divided into five appendices. New in this section is the addition of agricultural products, i.e. tariff concessions granted on MFN basis and tariff quotas, alongside the traditional tariff concessions on ordinary manufactures including processed agricultural products granted on an MFN basis.

The GATT 1994 and GATT 1947 are two different agreements and legally distinct, although GATT 1994 consists of the text of GATT 1947 and its legal instruments, as well as of several Understandings on interpretations and modifications of GATT Articles (namely, Article II.1(b)—‘other duties or charges’; Article XVII—Government Procurement; Articles XII and XVIII : B—transparency in restrictive imports due to balance of payments situation; Article XXIV—customs unions and free trade areas; Article IX—Waivers; and Article XXVIII—modification or withdrawal of a concession) and the Marrakesh protocol containing schedules of concessions on goods. In the Uruguay Round, the participants, due to lack of time, could not accomplish the legal task of drafting those parts of the GATT 1947 which are to be superseded by the WTO Agreement. The pragmatic solution found was to incorporate the GATT 1947 by reference through inclusion of an incorporation clause in Annex 1A of the WTO Agreement. The incorporation clause makes it clear that in the event of a conflict between a provision of the GATT 1994 and a provision of another agreement in Annex 1 : A, the provision of the other agreement shall prevail to the extent of the conflict.

Prior to the entry into force of the WTO, i.e. 1 January 1995, the GATT had been applied provisionally, and any country could apply mandatory legislation that was in existence on 30 October 1947 or a date specified in its accession protocol, even if such legislation was inconsistent with GATT. Under the WTO system, the GATT 1994 is to be applied definitively and any legislation incompatible therewith is to be eliminated subject to

a limited exemption referred to in paragraph 3(a) of the GATT 1994 text.<sup>5</sup>

### I/A/2 : Sectoral Agreements and/or Agreements on implementation of basic GATT trade rules

The WTO Agreement is followed by a number of sectoral agreements and/or agreements on implementation of basic GATT trade rules. The salient aspects of these agreements are highlighted as below:

*Agreement on Agriculture* : This agreement brings trade in agricultural products into the GATT 1994 for the first time. Its objective is to bring substantial progressive reductions in agricultural support and protection over an agreed period of time and to foster free trade in world agricultural markets. The products to which the Agreement applies are listed in its Annex I. The Agreement obligates the Members to reduce domestic support and export subsidy commitments for the agricultural products under its coverage and where domestic support commitments exists, they are required to be set out in the Member’s schedule. The Agreement makes provision for special and differential treatment for developing countries. *While the developing country members have been given the flexibility to reduce commitments over a period of upto 10 years, the LDCs have been completely exempted from this commitment. It also obligates the developed country members to take special measures taking into the situation of the LDCs and the net—food importing developing countries.* It establishes a Committee on Agriculture to monitor and review the progress made in the implementation of the reform process in the field of agriculture.

*Agreement on the Application of Sanitary and Phyto-sanitary Measures* : This Agreement affirms that Members are entitled to take such measures to protect human, animal and plant life, subject to the requirement that such measures are applied in a manner which would not constitute an arbitrary or unjustifiable discrimination between Members or act as a disguised restriction on international trade and that they are based on scientific principles. To promote transparency in this area, the Agreement obligates the Members to publish all their sanitary and phyto-sanitary regulations promptly. Annex A to the Agreement sets forth the definition of sanitary or phyto-sanitary measures:

“Any measure applied :

- (a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread

5. This exemption was negotiated by USA to permit retention of its Jones Act which prohibits the use, sale or lease of foreign-built or foreign re-constructed vessels in commercial applications between points in national waters or waters of an exclusive economic zone.