

## ANNEX IA, MULTILATERAL AGREEMENTS ON TRADE IN GOODS IA/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 IA 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 area; 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due to lack of time, could not accomplish the legal task of drafting those parts of the GATT 1947 which are to be superseded by the WTO Agreement.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 IA 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 I : 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 2 of the GATT 1994 text.<sup>2</sup>

## IA/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 1. 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.

<sup>2</sup> 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 reconstructed vessels in commercial applications between points in national waters or waters of an exclusive economic zone.

### **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 of pests, diseases, disease-carrying organisms or disease-causing organisms;
- (b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing Organisms in foods, beverages or foodstuffs;
- (c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests, or
- (d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests

Under the Agreement, a procedure will be developed to monitor the process of international harmonization and the use of international standards, guidelines or recommendations in this area. Members are required to cooperate in the Committee on Sanitary and Phyto sanitary measures to

develop guidelines for the implementation of the concept of an appropriate level of sanitary and phyto sanitary protection against risks to human life or health or to animal and plant life and health.

**Agreement on Textiles and Clothing** - This Agreement is of a particular importance to developing countries as this sector has served as the engine of growth for them. It accounts for nearly 45 per cent of the developed countries' imports from the developing countries. For over three decades trade in this area of critical export interest to developing countries had been subject to a derogation from the disciplines of GATT, which permitted developed 'importing' countries to impose discriminatory restrictions against 'low cost' developing country suppliers. These restrictions first took the form of the short-term Cotton Textile Arrangement in 1962, and eventually the Multi-Fibre Arrangement (MFA) in 1974, which expanded in country and product coverage at each renewal. For the first time, during the Uruguay Round, efforts were made to negotiate the termination of this long-standing derogation in a sector in which the developing countries have traditionally enjoyed comparative advantage and their exports have been discriminated against. The Agreement on Textiles and Clothing provides for the progressive phasing out of all MFA restrictions as well as other restrictions and the integration of this sector into GATT 1994 in four stages over a non-renewable transition period of 10 years. Since each importing member will select the products it wishes to be integrated into GATT unilaterally, it is difficult to foresee which of the MFA restrictions will be phased out in the early stages, although it may be expected that most sensitive products, where the growth rates are lowest and quota levels filled, will be liberalized at the final stage. Thus, many developing countries will derive meaningful benefits in this sector only in the tenth year. However, the Agreement continues to allow MFA-type selective safeguard actions (imposition of quotas and the negotiation and implementation of bilateral agreements) to be applied during the transition period under the so called "transitional safeguards". A new Textiles Monitoring Board has been put in place to replace the existing Textiles Surveillance Body.

**Agreement on Technical Barriers to Trade** - This Agreement known as the Standards Code, clarifies the existing Tokyo Round Agreement thereby seeking to ensure that technical regulations and standards, including

packaging, marking and labelling requirements as well as testing and certification procedures under technical regulations and standards do not create unnecessary obstacles to international trade. It, however, recognizes the right of the countries to establish environmental protection standards appropriate to protect human, animal or plant life and to take measures that those standards are met. The Agreement is not, however, applicable to sanitary and phyto sanitary measures as defined in the Agreement on that subject-matter nor to purchasing specifications prepared by governmental bodies for their own production or consumption requirements. The Agreement is applicable to all products, including industrial and agricultural products. The terms 'technical regulations, 'standards' and 'conformity assessment procedures' have been defined in Annex 1 to this Agreement. Since developing countries may face difficulties in the application of the technical regulations and standards, other Members, in the formulation and application of their technical regulations and standards, have been required to take into account the special development, financial and trade needs of the developing counn members, with a view to ensuring that such technical regulations and standards do not create unnecessw obstacles to exports from developing country members. The Agreement establishes a Committee on Technical Barriers to Trade for holding periodic consultations related to the operation of the Agreement or the furtherance of its objectives.

**Agreement on Trade-Related Investment Measures (TRIMs).** The TRIMs Agreement establishes the extent to which multilateral trade obligations cover investment measures. It prohibits those measures which are prohibited by Articles III and XI of GATT 1994. The developing countries were thus successful in preventing the extension of trade obligations into the field of investment, and the incorporation of principles such as 'right of establishment' and 'national treatment' for investors into the trading system. Countries maintain their sovereign rights to regulate foreign direct investment so long as the TRIMs Agreement is not infringed. The Preamble of the TRIMs Agreement recognizes that certain investment measures can cause trade restrictive and distorting effects. The scope and coverage of the Agreement is circumscribed by Article 1 which stipulates that it relates to trade in goods only. Article 2 on National Treatment and Quantitative Restrictions in the TRIMs Agreement limits the prohibited TRIMs to those inconsistent

with the provisions of GATT Article III on National Treatment on Internal Taxation and Regulation and Article XI on General Elimination of QRs. The Agreement, therefore, recognizes that certain measures do violate GATT Articles but does not expand on the existing disciplines. The Annex to the Agreement contains an illustrative list of such TRIMs which are mandatory or enforceable under domestic law or under administrative rulings, or compliance with which is necessary to obtain an advantage (an 'advantage' is not defined in the Agreement) as follows: (i) under the national treatment obligation TRIMs include those that require: (a) the purchase or use by an enterprise of products of domestic origin or from any domestic source' i.e. local content requirement); or (b) that an enterprise's purchases or use of the imported products be limited to an amount related to the volume or value of local products that it exports (trade balancing requirement); TRIMs that are inconsistent with the obligation of Article XI: 1 are those which restrict (a) the importation of products to an amount related to the quantity or value of local products exported (i.e. trade balancing); (b) the importation of products by restricting an enterprise's access to foreign exchange to the amount of foreign exchange inflows attributable to the enterprise (i.e. exchange restrictions); or (c) the exportation of products specified in terms of volume or value of local production (i.e. domestic sales requirement)

The TRIMs Agreement doesn't give a definition of a TRIM or an objective test for identifying such measures. It seems, therefore, that it is for the notifying country to judge which of its TRIMs are illegal under the Agreement.

**Agreement on Implementation of Article VI of GATT 1994 (The Anti-Dumping Agreement)** Since the decade of 1960 efforts have been made to control the use of anti-dumping duties. During the Kennedy Round, a code was negotiated which embodied detailed procedures, limited the use of preliminary measures and of retroactive application of anti-dumping duties and required a test of injury to domestic industry. Despite these improvements, anti-dumping duties have continued to be used frequently and rigorously by major industrial countries partly because the test of injury to domestic industry was not difficult to meet. The 1994 Agreement represents an attempt to improve on the imprecise formulations in the 1979 Code. In several instances, some rules have

been clarified or made precise through the inclusion of numerical standards, e.g. the 5 per cent rule for the determination of dumping, quantitative criteria for immediate dismissal of anti-dumping cases through the use of de minimis dumping margins and import volumes,<sup>6</sup> and a sun-set clause' to terminate anti-dumping duties on a date not later than five years from their imposition, unless a determination is made that, in the event of termination of those measures, dumping and injury would be likely to continue or recur. Procedural requirements are amplified and made more detailed for initiation of investigations, evidence and transparency. Attempts to control some controversial national practices have succeeded to a certain extent but at the price of codifying them into the Agreement (e.g. cumulative injury assessment). The Agreement also provides for the redefinition of dumping - price discrimination - to include below cost of production dumping (Articles 2.1 and 2.2). Nevertheless, it has left some important questions unanswered such as circumvention of anti-dumping duties and the relevance of anti-dumping measures in the context of domestic competition policies for future negotiations. The standards of review on dispute settlement, which require greater deference to decisions by national administering authorities under Article 17.6 constitute a controversial feature of the Agreement. Whether they will unduly insulate the national regulations of all WTO members from successful challenges will have to be weighed against complaints that panels have increasingly penetrated areas that governments would wish to reserve exclusively for themselves. The meaningfulness of the provisions of the Agreement will reside in their application in national laws and administrative practices.

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<sup>6</sup> The margin of dumping is *de minimis*, i.e. less than 2 percent expressed as a percentage of the export price; or the volume of dumped imports from a particular country accounts for less than 3 percent of imports of the like product in the importing member. This rule will not be applicable when countries with less than 3 percent of the imports of the like product in the importing country collectively account for more than 7 per cent of imports of the like product in the importing country; or where the injury is negligible.

**Agreement on Implementation of Article VII of GATT 1994 (The Customs Valuation Code).** This Agreement is the revised version of the Tokyo Round Code done on 12 April 1979. It responds to the need for the establishment of a unified system for the valuation of goods based on objective criteria for customs purposes. The primary basis for customs value under the Agreement is the "transaction value" of the imported goods as defined in Article 1. Articles 1 to 6 provide the various modalities for ascertaining the transaction value based on information provided by or in consultation with the importer; if the transaction value cannot be ascertained through any of these methods, under Article 7, it is to be determined on the basis of data available in the country of importation. The Agreement obligates the WTO members to publicise their laws and regulations giving effect to the Agreement. It establishes a Committee on Customs Valuation for holding consultations amongst the Members on matters related to administration of the customs evaluation system instituted by them. The Agreement provides for special and differential treatment for developing country members in that those of them which were not parties to the 1979 Agreement can delay the application of the 1994 Agreement for a period not exceeding five years. Developed country members have been obligated to furnish technical assistance to such developing countries in this context.

**Agreement on Preshipment Inspection (PSI):** This is a new Agreement and it extends the application of GATT principles to the practice of employing specialist private companies or agencies to check shipment details, i.e. price, quantity, quality of goods ordered overseas, including currency exchange rate and financial terms, and/or the customs classification of goods to be exported, prior to despatch and which is common in most of the developing countries in order to safeguard against commercial fraud, or capital flight, customs duty evasion etc. Henceforth, PSI-user governments must ensure that such inspections are nondiscriminatory, transparent, protect confidential business information and avoid unreasonable delay. The Agreement stipulates that the Ministerial Conference may amend its provisions as the result of a review to be conducted at the end of the second year from the entry into force of the WTO Agreement and every three years thereafter.

**Agreement on Rules of Origin :** This is also a new agreement and aims at the long-term harmonization of rules of origin, other than those related to the granting of trade preferences, to facilitate the flow of international trade. Article 1 of the Agreement defines the 'Rules of Origin' as "laws, regulations and administrative determinations applied by any Member to determine the country of origin of goods". The Agreement sets out a harmonization plan to be set up within a period of three years after the completion of the Uruguay Round to be carried out by a Committee on Rules of Origin and a Technical Committee under the auspices of the Customs Cooperation Council on the basis of the following principles:

- (a) rules of origin should be applied equally for all purposes as set out in Article 1;
- (b) rules of origin should provide for the country to be determined as the origin of a particular good to be either the country where the good has been wholly obtained or, when more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out;
- (c) rules of origin should be objective, understandable and predictable;
- (d) notwithstanding the measure or instrument to which they may be linked, rules of origin should not be used as instruments to pursue trade objectives directly or indirectly. They should not themselves create restrictive, distorting or disruptive effects on international trade. They should not pose unduly strict requirements or require the fulfilment of a certain conditions not relating to manufacturing or processing as a prerequisite for the determination of the country of origin. However, costs not directly related to manufacturing or processing may be included for purposes of the application of an ad valorem percentage criterion.

- (e) rules of origin should be administrable in a consistent, uniform, impartial and reasonable manner.
- (f) rules of origin should be coherent;
- (g) rules of origin should be based on a positive standard. Negative standards may be used to clarify a positive standard.

**Agreement on Import Licensing Procedures:** The revised Agreement strengthens the disciplines set out in the Tokyo Round Agreement for users of import licensing systems. Emphasis is now on greater transparency and predictability where such import licensing systems are still used, e.g. publication of sufficient information to traders to know on what basis licenses are granted. On automatic licensing procedures, the Agreement sets out criteria under which they are assumed to not to have trade restrictive effects, unless, *inter alia*:

- (i) Any person, firm or institution which fulfills the legal requirements of the importing Member for engaging in import operations involving products subject to automatic licensing is equally eligible to apply for and to obtain import licenses;
- (ii) applications for licenses may be submitted on any working day prior to the customs clearance of the goods;
- (iii) applications for licenses when submitted in appropriate and complete form are approved immediately on receipt, to the extent administratively feasible, but within a maximum of 10 working days;

**Agreement on Subsidies and Countervailing Measures** -This Agreement establishes, for the first time, a definition of subsidies as involving a financial contribution by a government or any public body which thereby confers a benefit. Subsidies are now classified into prohibited, actionable and non-actionable, which reflects an international consensus as to the appropriate role for governments in supporting

production and exports. Specificity is a key concept in the Agreement in that remedies provided against prohibited subsidies in Part II, or against actionable subsidies in Part III, or countervailing measures in Part V, can be applied only if a subsidy is specific to an enterprise or industry or a group of enterprises or industries. Members will have three years to bring their-existing programmes into conformity with the Provisions of the Agreement, with flexibility given to developing countries and least developed countries.

The 'prohibited subsidies' are those which are contingent, either solely, or as one of several other conditions, upon export performance or upon the use of domestic over imported goods. New dispute settlement procedures are designed to expedite the handling of action on such prohibited subsidies by the Dispute Settlement Body. The 'actionable subsidies' are those which create adverse effects to the interests of their signatories, i.e. injury to domestic industry of another signatories, i.e. injury to domestic industry of another signatory, nullification or impairment of benefits accruing, directly or indirectly, to other signatories under the GATT 1994 (in particular, benefits under bound tariff concessions) and which, cause serious prejudice to the interest of another. 'Non-actionable subsidies', either specific or non-specific subsidies, which involve assistance to industrial research and pre-competitive development activity, assistance to disadvantaged regions (regional subsidies or aids) or certain types of assistance for adapting existing facilities to new environmental requirements imposed by law or regulation.

The Agreement will provide a degree of predictability in international trade as regards the use by governments of clearly prohibited subsidies and the fact that other subsidies have been categorized as permissible but actionable, with comprehensive guidance on determination of adverse effects and serious prejudice, alongwith detailed remedies. Some of the contentious issues in relation to prohibited and actionable subsidies (e.g. adverse effects, serious prejudice and the remedies to deal with such subsidies) may perhaps be negotiated outside the bounds of this agreement, in particular with respect to steel and civil aircraft. The Agreement in general does not apply to subsidies on

agricultural products, which have been dealt with in the Agreement on Agriculture, through the negotiation of quantitative limits on domestic and export subsidies.

**Agreement on Safeguards:** This Agreement contains detailed rules to ensure that WTO members make proper use of Article XIX safeguard actions to put an end to the proliferation of 'grey area' measures, e.g. voluntary export restraints (VERs), orderly marketing arrangements (OMAs) and price monitoring which have been threatening the credibility of multilateral trade disciplines. The Agreement provides for more transparent national procedures for the initiation of safeguard action, and the determination of serious injury and the threat thereof, clearly prohibits voluntary export restraints and confirm the MFN principle. Any such measures in effect at the time of entry into force of the WTO must be brought into conformity with the Agreement or phased out over four-year period. It also includes so-called 'sunset clauses' on all safeguard actions whereby all existing safeguard measures taken under Article XIX of GATT 1947 will be terminated not later than eight years after the date of entry into force of the WTO Agreement whichever comes later. A measure of flexibility is permitted, however, in certain circumstances, when quotas are being allocated under the so-called quota-modulation system and this could lead to a certain selectivity although such departures would be subject to specific disciplines and surveillance.<sup>7</sup> The achievement of an effective and efficient multilateral safeguard system for the application of GATT Article XIX is of paramount importance for strengthening trade disciplines and improving security of access to markets, particularly for developing countries and weaker trading partners. Moreover, the Agreement grants differential and more favourable treatment for developing countries by means of a threshold clause under which safeguard measures will not be applied to a product of a developing country with an import share of less than 3 per cent, and the period of application of safeguard measures-will be extended

<sup>7</sup> Quota modulation provides that members may deviate from the MFN provisions when an overall import quota is imposed by an importing country against all sources of suppliers, in that the share allocated to countries found to be contributing more to global injury could be lower than the share allocated to them on the basis of recent trade patterns.

## **1B. General Agreement on Trade in Services (GATS):**

This is the next major agreement set out in Annex 1B to the WTO Agreement which brings services within the multilateral discipline. The unique feature of this agreement is the extension of the scope of multilateral trade rights and obligations to cover such measures as those relating to foreign direct investment, movement of persons, and of electronic data across national frontiers, as well as professional qualifications, thus making these legitimate subject-matters for inclusion in future trade negotiations. It contains the first agreed definition of 'trade in services' which can be accomplished through the four 'modes of supply' of cross-border movement of consumers, commercial presence, and the presence of natural persons. The main body of GATS rests on three pillars. First, a Framework Agreement which contains basic obligations, definitions and scope of services in Part I. This is followed in Part II by application of general obligations and disciplines, such as MFN, transparency, provision for increased participation of developing countries in international trade in services, the administration of domestic regulations pertaining to services in a reasonable, objective and impartial manner, obligations with respect to recruitment in services area, the use of limited restrictions on international transfers and payments in the event of balance of payments difficulties and the application of general and special exceptions, where permitted. Part III sets out provisions on market access and national treatment - not drafted as general obligations but rather specific commitments to be included in national schedules. Developing countries are required to liberalize, but to a lesser degree, and market access granted by them is conditional upon measures to assist them to strengthen their services sectors through access to information networks and distribution channels. Part IV establishes the basis for progressive liberalization of services through further trade negotiations rounds including the withdrawal and modification of commitments in national schedules after three years. Part V contains the institutional provisions including the establishment of a GATS Council and dispute settlement procedures. The second pillar is the national schedules of commitments containing specific further national commitments which will be the subject of a continuing process of liberalization, just like tariff concessions in the goods sphere. The third is a number of Annexes

which is a compromise to the agreed position to leave specific services sectors outside the framework Agreement.\*

## **1C. Agreement on Trade-Related Aspects of Intellectual Property Rights, including Trade in Counterfeit Goods (TRIPS):**

This Agreement set out in Annex 1C to the WTO Agreement, opens up a new field to the application of substantive GATT rules. The Agreement introduces profound changes in the traditional standards of intellectual property rights, which will influence competition in the world economy, as well as the generation and diffusion of technological innovations, and, ultimately, the technological prospects of developing countries. Through the Agreement, the basic GATT principles of national treatment and MFN treatment are applied to intellectual property rights, the provision of effective enforcement measures for those rights, multilateral dispute settlement and transitional arrangements. The Agreement establishes minimum standards on patents, copyrights, trademarks, industrial designs, geographical indications, layout designs for integrated circuits and protection of undisclosed information, which are enforced through a comprehensive set of provisions, building upon, and, in certain, cases, going beyond the provisions of existing international instruments in this area. It establishes that all products or processes in all fields of technology are patentable. The 'General Obligations' (part III, section 1) calls on countries to make available, under their laws, enforcement procedures and remedies to enable right holders to take action against any infringement of intellectual property rights. One of the most significant provisions is that the judicial authorities should be empowered to order, without hearing the alleged infringer, provisional measures, *inter alia*, to prevent infringement and to preserve evidence. In respect of each category of intellectual property,

\* Four Negotiation Groups - on Financial Services, basic Telecommunications, Maritime Transport and Movement of persons have been at work since May 1994. Their objective is to extend and improve the commitments undertaken by governments on these subjects during the Uruguay Round. The Negotiations on Financial Services and on Movement of persons were to be completed in June 1995 and those on basic telecommunications and maritime transport are expected to be completed in the first half of 1996.