International Trade Centre

EXPORT IMPACT FOR GOOD

FOSTERING TRADE THROUGH PUBLIC-PRIVATE DIALOGUE

BUSINESS IMPLICATIONS OF WTO ACCESSION

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PREFACE

The International Trade Centre (ITC) under its services titled “Business & Trade Policy” has organized public-private dialogues on evolving international trading environment. ITC’s main focus is on fostering communications between business and government, and joint analysis of the business opportunities and challenges encountered as a result of trade negotiations at the multilateral and regional / bilateral forums.

ITC organized a public – private dialogue on issues relating to WTO Accession negotiations for a group of countries in Vienna on 12-13 December 2007. The meeting focused on business implications of integration of countries in to the global economy by acceding to the WTO.

The meeting covered diverse areas, which have relevance from the perspective of accession negotiations, such as, Salient features of these negotiations, Fundamental Principles of WTO Agreements, Agreement on Agriculture, Agreement on Application of Sanitary and Phytosanitary Measures, Intellectual Property and Trade in Services.

The findings described in the report reflect the discussion amongst policy analysts and business practitioners. The report is intended to guide the business leaders in acceding countries to equip themselves with technical capacity to be able to collaborate with their governments in formulating their negotiating positions and design trade polices by appreciating new opportunities and challenges encountered in rapidly evolving international trading environment.

The representatives from the private and public sectors of Armenia, Azerbaijan, Belarus, Bulgaria, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Romania, Russian Federation, Tajikistan, Ukraine, and Uzbekistan attended this meeting.

ACCESSION TO WTO: SALIENT FEATURES

WTO Membership

WTO has 151 member governments. 128 of these joined the WTO at its inception in 1995[1] and 23 have acceded since then. 29 governments are in the process of accession. Some of these countries are closer to acceding than others. Only 13 members of the United Nations have not applied for membership.

The process of accession is open-ended and gives individual WTO members a significant role.

Table 1
List of countries
Acceded to the WTO since 1995
(Under Article XII of the Marrakech Agreement)

Name of the country	Date of accession	Name of the country	Date of accession	Name of the country	Date of accession
Ecuador	21 January 1996	**Georgia**	14 June 2000	**Armenia**	5 February 2003
Bulgaria	1 December 1996	**Albania**	8 September 2000	**Former Yugoslav Republic of Macedonia (FYROM)**	4 April 2003
Mongolia	29 January 1997	**Oman**	9 November 2000	**Nepal**	23 April 2004
Panama	6 September 1997	**Croatia**	30 November 2000	**Cambodia**	13 October 2004
Kyrgyz Republic	20 December 1998	**Lithuania**	31 May 2001	**Saudi Arabia**	11 December 2005
Latvia	10 February 1999	**Moldova**	26 July 2001	**Viet Nam**	11 January 2007
Estonia	13 November 1999	**China**	11 December 2001	**Tonga**	27 July 2007
Jordan	11 April 2000	**Chinese Taipei**	1 January 2002		

[1] This chapter is based on the presentation of Mr. Peter Williams, Former Director, GATT
Additional information is available at: http://www.wto.org/English/thewto_e/gattmem_e.htm

Table 2
Summary of ongoing WTO accessions[2]

	Application	Working Party Established	Memorandum	Goods Offer		Services Offer		Draft Working Party Report **
				initial	latest*	initial	latest*	
Afghanistan	Nov 2004	Dec 2004						
Algeria	Jun 1987	Jun 1987	Jul 1996	Feb 2002	Jan 2005	Mar 2002	Jan 2005	Jun 2006
Andorra	Jul 1997	Oct 1997	Mar 1999	Sep 1999		Sep 1999		
Azerbaijan	Jun 1997	Jul 1997	Apr 1999	May 2005	Apr 2007	May 2005	Mar 2007	
Bahamas	May 2001	Jul 2001						
Belarus	Sep 1993	Oct 1993	Jan 1996	Mar 1998	May 2006	Feb 2000	Sep 2006	Apr 2005 (FS)
Bhutan	Sep 1999	Oct 1999	Feb 2003	Aug 2005	Apr 2007	Aug 2005	Apr 2007	Sep 2006
Bosnia and Herzegovina	May 1999	Jul 1999	Oct 2002	Oct 2004	Jun 2005	Oct 2004	Jun 2005	Feb. 2007 (FS)
Comoros	Feb 2007	Oct 2007						
Ethiopia	Jan 2003	Feb 2003	Jan 2007					
Iran	Jul 1996	May 2005						
Iraq	Sep 2004	Dec 2004	Sep 2005					
Kazakhstan	Jan 1996	Feb 1996	Sep 1996	Jun 1997	May 2004	Sep 1997	Jun 2004	Sep 2006
Lao People's Democratic Republic	Jul 1997	Feb 1998	Mar 2001	Nov 2006				
Lebanese Republic	Jan 1999	Apr 1999	Jun 2001	Nov 2003	Jun 2004	Nov 2003	Jun 2004	Mar 2007
Libyan Arab Jamahiriya	Jun 2004	Jul 2004						
Montenegro	Dec 2004	Feb 2005	Mar 2005	Jun 2006	Feb 2007	Jul 2005	Jun 2006	
Russian Federation	Jun 1993	Jun 1993	Mar 1994	Feb 1998	Feb 2001	Oct 1999	Jun 2002	Oct 2004
Samoa	Apr 1998	Jul 1998	Feb 2000	Aug 2001		Aug 2001	Feb 2006	Nov 2006
Sao Tome and Principe	Jan 2005	May 2005						
Serbia	Dec 2004	Feb 2005	Mar 2005	Apr 2006		Oct 2006		
Seychelles	May 1995	Jul 1995	Aug 1996	Jun 1997		May 1997		Jun 1997
Sudan	Oct 1994	Oct 1994	Jan 1999	Jul 2004	Oct 2006	Jun 2004	Oct 2006	Sep 2004 (FS)

[2] Updated July 2007 (on the date of writing this paper **Cape Verde's** accession package was adopted by the General Council, but it was not ratified by Cape Verde (Cape Verde is not formally a Member). Available at: http://www.wto.org/english/thewto_e/acc_e/status_e.htm

Tajikistan	May 2001	Jul 2001	Feb 2003	Feb 2004	Jun 2006	Feb 2004	Jun 2006	May 2006 (FS)
Ukraine	Nov 1993	Dec 1993	Jul 1994	May 1999	May 2002	Feb 1997	Jun 2004	Apr 2007
Uzbekistan	Dec 1994	Dec 1994	Oct 1998	Sep 2005		Sep 2005		
Vanuatu	Jul 1995	Jul 1995	Nov 1995	Nov 1997	Nov 1999	Nov 1997	Nov 1999	Accession Package Oct 2001
Yemen	Apr 2000	Jul 2000	Nov 2002	Sep 2005	Jun 2006	Aug 2005	Jun 2006	Jun 2006 (FS)

Accession to WTO: Basic provision

Article 12 of the WTO Agreement - the basic provision governing the accession of new members - simply provides that Governments may accede “on terms to be agreed between it and WTO”.

It is an open-ended provision, as it does not set limits to the requests that WTO members may make of new members. WTO has not given any further guidance on the terms on which applicants may join the organization. In addition, the procedures followed have not been formally adopted although they are quite well defined by now. There is a common trend in the WTO accession process that additional (WTO-plus) requirement are being imposed on acceding countries irrespective of their economic development levels.

By pushing acceding countries to undertake such obligations WTO Members chase both short-run and long run targets. They not only make individual countries to have additional binding commitment, but allow other WTO members to free ride. They also construct a basis for future creation of new disciplines in the WTO law.

The process of accession

A separate Working Party is set up to examine each application and to supervise the negotiation of the terms. When this work is complete, the WTO offers the agreed terms to the applicant. The applicant becomes a member 30 days after it accepts these terms.

This sounds simple, but the process is long and demanding. China took 15 years to accede. Russia is in the process of accession for the same period of time. Moldova took over 7 years and Armenia over 9 years to accede.

Some aspects of the negotiations are bilateral and others are multilateral.

One important feature of the process is that, even though WTO is a multilateral organization, some aspects of the negotiations are bilateral.

Bilateral Track

Each acceding country must negotiate a list of specific commitments on goods and a list of specific commitments on services. The specific commitments on goods specify the products on which the country makes commitments and maximum levels for the customs tariff on these products ("tariff bindings"). They also record maximum levels for agricultural domestic support and for agricultural export subsidies.

The specific commitments on services identify the service sectors to which the new member will apply the market access and national treatment obligations under the General Agreement on Trade in Services (GATS) and any exceptions from these obligations, which it has the right to maintain. Article XVI:2 of the GATS lists six categories of restriction which may not be adopted or maintained in sectors where market-access commitments are undertaken unless they are specified in the schedule of commitments. In the case of national treatment, the specific commitments must list any government measures that result in more favourable treatment for domestic services or service suppliers than for foreign services and service suppliers.

Multilateral Track

Multilateral negotiations are carried out in the accession working partiers. In the first phase, the working party examines the trade regime of the acceding country with a view to establishing the facts and the conformity of the regime with WTO requirements. The main subjects dealt with are listed in Table 3. This shows that working parties have identified some 40 different areas in which government policies may have an impact on international trade and WTO obligations.

Table 3
Trade Regime - Main Subjects

Economic Policies	Export Duties, Taxes
Monetary and Fiscal	Export Restrictions
Foreign Exchange	Export Subsidies
Balance of Payments Measures	**Trade in Goods – Internal**
Investment	Subsidies
State Ownership, Privatization	Technical Barriers to Trade
Pricing	Sanitary and Phytosanitary Measures
Competition	Trade-Related Investment Measures
Policy Framework	State Trading Entities
Executive, Legislative, Judicial Branches	Free Zones
Judicial Review	Barter
Sub-Central, Uniform Administration	Government Procurement
Trade in Goods	Transit
Trading Rights	**Trade in Goods - Sectors**
Trade in Goods - Imports	Agriculture
Customs Duties	Civil Aircraft
Other Duties and Charges (ODCs)	Textiles and Clothing
Tariff Rate Quotas	**Trade-Related Intellectual Property Rights**
Tariff Exemptions	TRIPS
Fees and Charges for Services Rendered	**Trade in Services**
Internal Taxes	Services
Quantitative Restrictions, Licensing	**Transparency**
Customs Valuation	Publication
Rules of Origin	Notifications
Other Formalities	**Trade Agreements**
Preshipment Inspection	Trade Agreements
Anti-dumping, Countervailing Duties, Safeguards	
Trade in Goods - Exports	

When the fact-finding phase is completed negotiations take place on the rules to be accepted by the applicant in each of these areas. The applicant and the members of the working party also agree when and how any necessary changes to the applicant's laws, regulations and practices are to be made. Finally, each working party reviews the results of the bilateral negotiations on goods and services, and prepares its report and proposes the terms on which the applicant will accede.

In practice, all decisions, such as those needed to set up a working party or to agree the terms, are taken by consensus.

While Article XII of the Marrakesh Agreement states that decisions on accession is decided by a two-thirds majority, in practice, all decisions, such as those needed to set up a working party or to agree the terms, are taken by consensus. All WTO members are attached to this practice, which gives each WTO member taking part in the process leverage in accession negotiations.

WTO membership involves far reaching rights and obligations which impact business. On accession, each applicant becomes a full member of the organization with both the rights and obligations of membership.

Lessons learnt from WTO Accession Negotiations

1. New members are expected to bind their import duties at relatively low levels.

Each accession is different but based on experience to date; new members are expected to bind all (or almost all) their import duties on goods at relatively low levels. All the countries that have already acceded to WTO bound all, or almost all, their tariffs - usually in *ad valorem* terms, rather than specific terms. The simple average of these ad valorem bindings varied from one country to another, from a low of 6 per cent to a high of 16 per cent. The average level of bindings of ad valorem duties are (in the order of accession to WTO): Kyrgyz Republic, 7.4 per cent (agriculture 12.3 per cent); Georgia, 7.2 per cent (agriculture 11.7 per cent); Moldova, 6.7 per cent (agriculture 12.2 per cent); Armenia, 8.5 per cent (agriculture 14.7 per cent). The simple average of bindings gives an idea of the overall level of the tariff but conceals as much as it reveals. The dispersion of bound rates around the average varies considerably from one country to another.

New members participate in at least some WTO sectoral arrangements. The Sectoral arrangements require participants to eliminate tariff rates on products falling in that sector. Sectoral arrangement exist for: civil aircraft, information technology products, agricultural equipment, beer, construction equipment, distilled spirits (brown), furniture, medical equipment, paper, steel toys, and pharmaceuticals. The arrangement on chemicals requires participants to align their tariffs on internationally harmonized rates.

Table 4 provides information on the participation of Kyrgyz Republic, Georgia, Moldova and Armenia in these sectoral initiatives.

Table 4
Participation of Newly Acceded CIS Countries in Sectoral Initiatives

	Full participation		Significant participation (approx. >75 percent of tariff lines)		No participation			

Country (in order of accession)	Sectors												
	ITA	Civil Aircraft Agreement	Chemical Harmonization	Pharmaceuticals	Agricultural Equipment	Construction Equipment	Medical Equipment	Paper	Steel	Toys	Furniture	Beer	Distilled Spirits
Kyrgyz Rep.													
Georgia													
Moldova													
Armenia													

When the bound rates are below the level of the tariff rates actually applied, transitional periods have been granted for the gradual reduction of applied rates over periods of up to 10 years.

2. New members reduce domestic support for agriculture that has trade-distorting effects and bind agricultural export subsidies at zero

All new members have bound agricultural export subsidies at zero.

Under the domestic support measures, of the 4 CIS countries that have already acceded to WTO, only Moldova maintained 'amber box' measures. It reduced these by 19.5 per cent and bound them at that level. Newly acceded Members have been allowed varied used *de minimis* entitlements. For example, China is allowed 8.5% *de minimis* instead of 10% applicable to developing countries. China has also not been allowed Article 6.2 flexibilities for supporting the 'low income and resource poor' producers.

3. New members make commitments on a large number of services sectors and sub-sectors.

Specific commitments on services are complex and it is difficult to make useful general statements about them. However, it is clear that countries that have acceded to date have made a large number of commitments - between 93 and 147 out of 160 sub-sectors.

Table 5 shows that the 4 CIS countries that have already acceded made commitments on all, or nearly all, the main services sectors.

Table 5
Main Service Sectors

	Kyrgyz Republic	Georgia	Moldova	Armenia
Service Sector				
Professional - legal	X	X	X	X
- accountancy	X	X	X	X
- taxation	X	X	X	X
- architectural and engineering	X	X	X	X
- medical	X	X	X	X
Computer and related	X	X	X	X
Research and development	X	X	X	X
Other business	X	X	X	X
Communication - postal	X		X	
- courier	X	X	X	X
- Telecom: - value added	X	X	X	X
- basic	X	X	X	X
- audiovisual	X	X		X
Construction	X	X	X	X
Distribution	X	X	X	X
Educational	X	X	X	X
Environmental	X	X	X	X
Financial - insurance	X	X	X	X
- banking and other	X	X	X	X
Health and social	X	X	X	X
Tourism	X	X	X	X
Recreational	X	X	X	X
Transport - Maritime	X	X	X	
- Air	X	X	X	X
- Rail	X	X	X	X
- Road	X	X	X	X
Total number of sectors 26	26	25	25	24

By no means all of these are full commitments.

4. New members accept all the rules in the WTO Agreements and some additional rules.

Countries that accede accept: the rules contained in the WTO Agreement and its Multilateral Agreements; and additional rules specified in its terms of accession ("Protocol commitments") which may be more stringent than the rules accepted by other WTO Members. For example, Vietnam was forced to take the commitments on 'trading rights of foreign companies although it is not required under the existing WTO Agreements. GATT Article III (National Treatment) does not apply to foreign persons or firms but only to imported products. In the 1984 report on 'Canada-Administration of the Foreign Investment Review Act' the GATT Panel concluded that any intention to extrapolate the meaning of Article III if the GATT to firms goes beyond the original intention of the contracting parties and the very meaning of the

principle of National Treatment. However, acceding countries are pushed to bind by commitments, which cover trading rights of foreign companies.

They are also expected to be in full conformity with their obligations by the date of their accession and accept a timetable for the legislative and administrative action necessary to achieve this ('legislative action plan'). Some rules are of more direct importance for business than others. In general, business is most directly affected by rules that regulate access to markets. Individual businesses are, of course, more affected by some rules than others.

Rules in the WTO's multilateral agreements include:

- In the area of trade in goods, rules governing customs valuation (Agreement on Article VII of GATT 1994), other duties and charges (Article VIII of GATT 1947); quantitative restrictions on imports (Articles XI to XIV of GATT 1947); internal taxes (Article III of GATT 1947); technical barriers to trade (Agreement on TBT); sanitary and phytosanitary measures (Agreement on SPS); and state trading enterprises (Article XVII of GATT 1947);

- The General Agreement on Trade in Services sets out basic principles but the specific commitments undertaken by each member in its Schedule often determine the practical effect of these rules. Examples: Each member may take exceptions to the most-favoured nation obligation, and members grant national treatment only in sectors listed in their Schedules; and

- The detailed minimum standards laid down in the Agreement on Trade-Related Intellectual Property (IP) Rights protect the rights of IP holders in the areas of copyright, trademarks, geographical indications, industrial designs, patents, layout designs of integrated circuits and undisclosed information will be of direct significance to some businesses.

Examples of rules specific to new members, which may be of particular interest to business in CIS countries, include obligations to:

- Report on implementation of privatization programmes;
- Reduce the level of subsidies on exports of agricultural products to zero;
- Join the Civil Aircraft Agreement; and
- Negotiate for membership of the Agreement on Government Procurement.

Accession to WTO is not enough by itself

WTO provisions are wide in scope but do not cover all policies affecting conditions of competition, e.g. exchange rates, which have significant impact on business. Innovation e.g. changes in technology and business methods can also have a great effect. In addition, WTO creates opportunities but it is up to governments and business to respond by taking advantage of these opportunities. Governments need to implement WTO provisions and to provide, e.g. infrastructure. Business needs to develop markets. This is why government/business dialogue is important. In this connection, knowledge is essential.

Membership of WTO affects each country and each line of business differently.

This is because, e.g. some businesses are export oriented while others operate only in their domestic market. Some products and services are more tradable than others. This introductory session can only look at the general picture. Each business needs to look at the details of the WTO agreements to find out how they impact them and to plan their strategy.

WTO AGREEMENTS: FUNDAMENTAL PRINCIPLES

Introduction

WTO accession of a particular country influences all types of businesses represented on its territory. WTO Agreements bind Governments, but have immediate and powerful effects on businesses and private operators**.**

Fundamental Principles of WTO Agreements

Non discrimination: The MFN and National Treatment principle. Under the WTO agreements, countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members. This principle is known as most-favoured-nation (MFN) treatment. Under the national treatment principle, imported and locally produced goods should be treated equally – at least after the foreign goods have entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents. This principle of 'national treatment'. Additional information is available at: http://www.wto.org/english/theWTO_e/whatis_e/tif_e/fact2_e.htm#seebox

Transparency[3] and *rule of law*. Effective application of this principles allows business to plan their and foresee trading strategies of foreign rivals. Special attention should be paid to transparency of TBT and SPS rules and measures. Transparency also presupposes information exchange among businesses from different countries. This principle is closely linked to the *principle of commercial predictability and legal certainty*. WTO dispute settlement system is an effective tool for protecting business and governments though effective application WTO Agreements, covering trade in goods and should be used as a main tool of protection of business interests.

Case study
Vietnam and WTO

Vietnam has recently joined the WTO and have already benefited a lot. A good example is its participation as a third party in the United States — Measures Relating to Shrimp from Thailand dispute. The claim was brought by Thailand against a number of US measures taken in relation to shrimp imports. In April 2006, Thailand requested consultations with the US concerning anti-dumping measures on imports of "frozen warm-water shrimps". Thailand contested the US practice known as "zeroing" negative dumping margins, arguing that, through its use of "zeroing", the US had failed to make a fair comparison between the export price and normal value and had artificially calculated distorted margins of dumping.

In October 2006, the WTO established a panel. Brazil, Chile, China, the EU, India, Japan, South Korea and Mexico reserved third-party rights. When, in January 2007, the WTO composed a panel, Vietnam

[3] This chapter is based on the presentation of Mr. Paulo Vergano, International Consultant, Brussels.
According to this principle countries' are bound to make the trade rules as clear and public ("transparent") as possible. Many WTO agreements require governments to disclose their policies and practices publicly within the country or by notifying the WTO. The regular surveillance of national trade policies through the WTO Trade Policy Review Mechanism provides a further means of encouraging transparency both domestically and at the multilateral level.

had joined the WTO and also reserved its third-party rights.

If Vietnam were not a member of the WTO it would most probably suffer from US measures and will not be able to use an expertise of the neighbouring countries to protect its trade interests.

The relevant WTO Agreements, covering *trade in goods* are: The GATT and the Agreement on Agriculture; The SPS and TBT Agreements; The Anti-dumping Agreement; The Agreement on Subsidies and Countervailing Measures; The Agreement on Safeguards; The Customs Valuation Agreement; The Agreement on Import Licensing Procedures; The Agreement on Rules of Origin; The Agreement on Pre-shipment Inspection; The TRIPS and TRIMs Agreements.

The following are the key provision of the WTO Agreements:

Trade Defence and Trade Remedies. Article VI of the GATT and the Anti-dumping Agreement provide for the right of WTO Members to apply anti-dumping measures against imports of a product at an export price below its "normal value" (usually the price of the product in the domestic market of the exporting country) if such dumped imports cause injury to a domestic industry in the territory of the importing WTO Member.

WTO law has rules in relation to the method of determining that a product is dumped, they establish the criteria to be taken into account in a determination that dumped imports cause injury to a domestic industry, the procedures to be followed in initiating and conducting anti-dumping investigations, and the implementation and duration of anti-dumping measures.

Importing country has 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 WTO Anti-dumping Agreement provides for clear procedures on how anti-dumping cases are to be initiated and how such investigations are to be conducted. Conditions for ensuring that all interested parties are given an opportunity to present evidence are set out. Provisions on the application of provisional measures, the use of price undertakings in anti-dumping cases, and on the duration of anti-dumping measures have been strengthened

The **Agreement on Subsidies and Countervailing Measures** 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.

- The second category is "*actionable*" subsidies. The agreement stipulates that no WTO Member should cause, through the use of subsidies, adverse effects to the interests of other WTO Member (i.e., injury to domestic industry of another Member; nullification or impairment of benefits accruing directly or indirectly to

other Members under the GATT, such as the benefits of bound tariff concessions; and serious prejudice to the interests of another WTO Member).

- The third category involves "*non-actionable subsidies*", which could either be non-specific subsidies, or specific subsidies involving assistance to industrial research and pre-competitive development activity, assistance to disadvantaged regions, or certain type of assistance for adapting existing facilities to new environmental requirements imposed by law and/or regulations.

The agreement also deals with the use of countervailing measures on subsidized imported goods. It sets out disciplines on the initiation of countervailing cases, investigations by national authorities, rules of evidence to ensure that all interested parties can present information and argument, timeframes for the investigations, and the need that a causal link be established between the subsidized imports and the alleged injury

The **Safeguards Agreement sets** out the criteria for "*serious injury*" and the factors, which must be considered in determining the 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 3 representative years for which statistics are available.

In principle, safeguard measures have to be applied irrespective of source. In cases in which a quota is allocated among supplying countries, the WTO Member applying restrictions may seek agreement with other Members having a substantial interest in supplying the product concerned.

The Safeguards Agreement also lays down time limits for all safeguard measures. Generally, the duration of a measure should not exceed 4 years though this could be extended up to a maximum of 8 years, subject to confirmation of continued necessity by the competent national authorities and if there is evidence that the industry is adjusting. The agreement envisages consultations on compensation for safeguard measures. Where consultations are not successful, the affected WTO Members may withdraw equivalent concessions or other obligations under the GATT. However, such action is not allowed for the first 3 years of the safeguard measure if it conforms to the provisions of the agreement

The **TBT Agreement** builds on GATT Article XX and it recognizes that WTO Members have the right to establish protection, at levels they consider appropriate, for example for human, animal or plant life or health or the environment, and should not be prevented from taking measures necessary to ensure those levels of protection are met. However, it seeks to ensure that technical regulations and standards, as well as testing and certification procedures, do not create unnecessary obstacles to trade and are prepared, adopted and applied so as not to be more trade-restrictive than necessary to fulfil a legitimate objective.

The TBT Agreement encourages WTO Members to use international standards where these are appropriate (i.e., harmonization), but it does not require them to change their levels of protection as a result of standardization. Important provisions on non-

discrimination, transparency, mutual recognition, proportionality, necessity and harmonization inform the entire agreement and are essential tools to allow businesses to work with their Governments to counter certain practices or policies that may represent powerful NTBs.

Business should not only know the rules but also be aware of **exceptions and flexibilities of the WTO law**. These are some examples of exceptions from general principles of WTO law.

1) GATT Article XIX and Safeguards Agreement (Emergency Action on Import of Particular Product);

2) General Exceptions GATT Article XX. According to this Article in spite of the obligation stemming from the WTO law Members are free to adopt measures in order, for e.g.:

a) to protect public morals, human, animal & plant health;

b) to prevent the exportations importations of silver & gold and etc. However, so-called chapeau (first paragraph) of GATT Article XX subjects these exceptions to the following standards. They (exceptional measures) can not: be arbitrarily discriminative between countries where the same conditions prevail; be unjustifiably discriminative between countries with same conditions; lead to disguised restriction on international trade;

3) GATT Article XXI. Security Exception;

4) GATT Article XII. Restriction for reasons of Balance of Payment;

5) GATT Article XXXVI.8. Discrimination on the basis of Non-reciprocal trade in favour of developing countries;

6) GATT Article XXIV on Free Trade Agreements (FTAs)& Customs Unions (CUs). Creation of FTAs and CUs must be notified to the WTO. In the period 1948-1994 124 RTAs were notified to the GATT (relating to trade in goods). Since the creation of the WTO in 1995 up till December, an additional 130 RTAs have been notified on the basis of GATT, GATS and the Enabling Clause; and a total of more than 300 estimated by the end of 2006;

7) Enabling Clause (GSP) for Developing countries. Enabling Clause id a Text of the 1979 GATT Decision allowing Preferential Trade Agreements (PTAs) in favour of Developing countries. Pursuant to Paragraph 1(b) (iv) of Annex 1A incorporating GATT 1994 into the WTO, Enabling Clause entered the WTO;

8) Article V GATS. Regional Trade Agreements (RTAs) on services and GATT/WTO Notification dates.

WTO AGREEMENT ON AGRICULTURE: RELEVANCE IN ACCESSION NEGOTIATIONS

Based on the presentation of Gretchen H. Stanton, Senior Counsellor, Agriculture and Commodities Division of the WTO

WTO Agreement on Agriculture (AoA)

In order to understand what makes trade in agricultural products different from all other goods it is necessary to concentrate on several unique features of the AoA.

The AoA is a *lex specialis* to all the remaining WTO Agreements including GATT and one cannot read the AoA without the country's schedule relating to the GATT. It provides the interrelation of the Agreements and other provisions regulating agricultural goods and all other goods.

Unlike every other WTO Agreement on trade of goods the AoA is based upon three pillars or blocks of provisions, which include the increase of market access, reduction of subsidized exports and control of domestic support measures.

The first two pillars were created to improve and widen the existing provisions of the GATT concerning agricultural products, while the third block of norms on domestic support (subsidies) was innovative.

Provisions of the AoA on Market Access

New provisions on market access *de facto* deleted GATT Article XI: 2 (c) and all types of non-trade barriers (NTBs) were banned. The main element of the new market access mechanism was based on the introduction of the tariff principle - the conversion into tariff equivalents of existing non-tariff barriers regardless of whether NTBs were maintained in compliance with GATT or under any country specific exemptions (Article 4.2 of the AoA).

New market access provisions *de jure* made agricultural products subject to customs duties only and thus ahead of other (manufactured) goods.

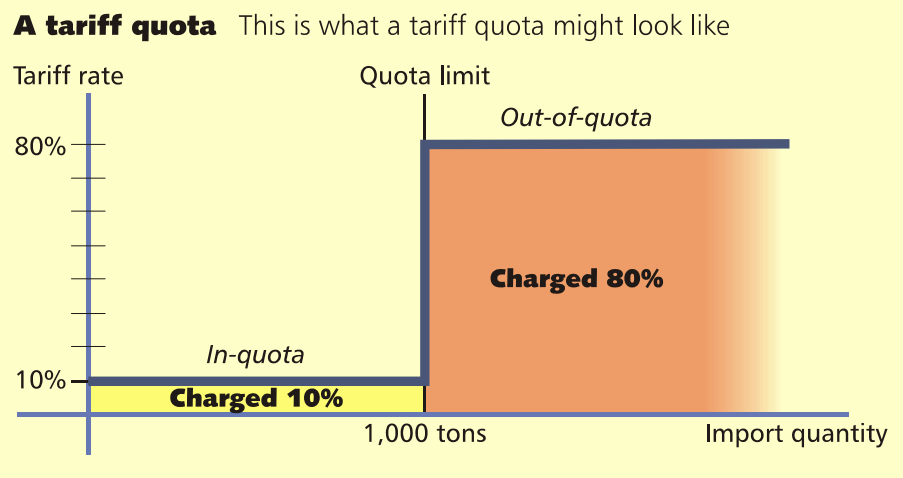
Table 6
Uruguay Round Reduction Commitments

	DEVELOPED	DEVELOPING
Implementation period	6 years 1995-2000	10 years 1995-2004
Average cut	-36%	-24%
Minimum cut	-15%	-10%

De facto new extremely high tariffs emerged and became more prohibitive than NTB equivalents which could not guarantee market access for the importing countries. In other words "tariffication" resulted in a number of "side effects", which are known as "*dirty tariffication* "[4], "*tariff peaks*"[5] and "*tariff escalation*"[6].

To protect themselves from the unexpected economic consequences of tariffication, WTO members included provisions on TRQ[7], in the AoA provisions and provided for expedited procedures for the introduction of safeguard measures (Article 5 of the AoA).[8]

Chart 1
TRQ



Provisions of the AoA on Export Subsidies

Similar to the above case on market access, the Uruguay Round negotiators agreed to cap and reduce their export subsidies. The new rules on export subsidies did not put agriculture on the same level as non-agricultural products and the AoA continued to allow agricultural export subsidies to be granted, although within limits set out in each respective national schedule of commitments. [9]

[4] "Dirty tariffication" is the use, during the tariffication process, of artificially-high domestic prices and artificially-low world market prices so to set a particular tariff at a level higher than trading partners thought it should be.
[5] "Tariff peaks" are considered to be rates set higher than the rates across the same product group or product sector. For some products, which governments consider "sensitive", tariff rates remain very high.
[6] If a country wants to protect its processing or manufacturing industry, it can set low tariffs on the imported raw materials used by the industry and set higher tariffs on finished products to protect the goods produced by its domestic processing industry. This is known as "tariff escalation".
[7] A tariff rate quota (TRQ)is a quantity of imports or exports within which a lower tariff applies. A higher tariff applies above the volume of the quota (the over quota tariff).
[8] Article 5 of the AoA allows the imposition of an additional customs duty, over and above the bound customs duty, when the imported product does not reach a predetermined "trigger" price, or where the volume of imports passes a "trigger" volume.
[9] This statement is true for about 25 WTO members, the countries which had been given subsidies during 1986-1990 periods.

Provisions of the AoA on Domestic Support (Domestic Subsidies)

For the first time a distinct regime for agricultural domestic support was introduced by the AoA and almost one half of the agreement was devoted to this category. There were at least two reasons for the introduction of the domestic subsidies. Firstly, at the time of negotiation of the AoA, the SCM Agreement had already been introduced which meant that without a separate agricultural regime on SCM, countries would have to unconditionally accept the SCM Agreement provisions on domestic subsidies. Members agreed to introduce specific provisions of the AoA on domestic subsidies and made the AoA to be *lex specialis* in relation to the SCM Agreement (Article 3 of the SCM).

Secondly, domestic support measures were recognized as the root of the problem of market access limitation and export subsidies. Thereupon countries agreed to introduce limitations on domestic subsidies and also agreed that different forms of domestic support distorted trade differently. Accordingly, different categories of domestic support measures otherwise known as boxes were introduced.

The "Red Box" included all subsidies known to seriously distort trade, which were prohibited. The "Amber Box" incorporated relatively trade distorting subsidies while the "Green Box" subsidies were minimally trade distorting and were excluded from the so-called Aggregate Measure of Support (AMS) calculation. The latter was created in order to qualify the amount of trade-distorting support provided by countries and was calculated based on all support levels in a base period that were greater that a *de minimis* level of five percent of the value of production, either for individual products or more broadly based programs. This reduction was applied to all expenditures that were not classified as export subsidies. However, an alternative was allowed for some countries through the creation of a new category of subsidies which would not be part of the calculation of the AMS – from which reductions would have to be made. This (supposedly temporary) "Blue Box" contained subsidies where the payment of the subsidy was contingent upon there being co-requisite production limits, which was possibly less trade distorting. In effect, the *de minimis* provisions and the "Blue Box" amounted to a considerable proportion of total domestic support that was not disciplined.

Chart 2

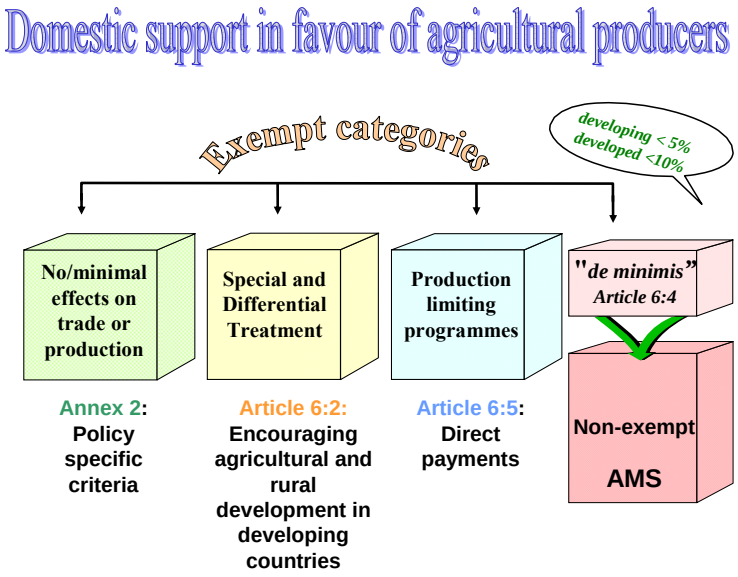


Table 7
Uruguay Round AMS Commitments

	DEVELOPED	DEVELOPING
Implementation period	6 years 1995-2000	10 years 1995-2004
Cut in Total AMS	-20%	-13.3%
De minimis allowance	5%	10%

No reduction commitments for LDCs

Along with the above-mentioned three pillars, the AoA added other specific provisions such as the so-called Peace Clause that was introduced to reduce the likelihood of challenge to some forms of agricultural subsidies. Another provision is an exemption to Article XVII granted to state-trading enterprises.

Co-existence of the AoA with other WTO agreements makes trade in agricultural products different from all other goods, a distinction which has been illustrated through the analysis of *lex specialis* elements of the AoA provided in this paper.

Next Table contains information on the Market Access commitments of new WTO members in the agricultural sector.

Table 8
New Members MA Commitments

	Tariff bindings (%)	Other
Albania	**10.8→9.4**	
Armenia	**14.7 →14.7**	
Bulgaria	**52.3 →35.5**	**73 TRQs**
Croatia	**13.0 → 9.4**	**8 TRQs**
Estonia	**19.2 →17.5**	
Georgia	**18.3 → 16.7**	
Kyrgyz Rep.	**12.4 → 12.3**	
Latvia	**35.8 →34.6**	**4 TRQs, ceiling binding 50%**
Lithuania	**16.3 →15.2**	**4 TRQs**
FYROM*	**13.7 → 11.3**	**1 TRQ**
Moldova	**18.1 → 12.2 55**	
Mongolia	**19.0 →18.9**	**ceiling binding 20%**

*** Former Yugoslav Republic of Macedonia**

THE AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES (SPS AGREEMENT)

Based on the presentation of Gretchen H. Stanton, Agriculture and Commodities Division of the WTO

SPS measure are defined as measures necessary to: protect human *or animal life* from risks arising from additives, contaminants, toxins or disease-causing organisms in food, beverages, feedstuff; protect *human life, plan t- or animal* from carried diseases (zoonoses). This field is a growing area of concern, since around 80 % of animal diseases can be spread to humans; protect *animal or plant life* from pests, diseases, or disease-causing organisms; protect *a country* from a damage caused by entry, establishment or spread of pests (including weeds).

Different types of measures are covered by the Agreement, including:

- Quarantine measures. Agreement is not limited by product but spreads on the all categories of products;
- Processing requirements;
- Certification;
- Inspection;
- Testing;
- Health-related labelling.

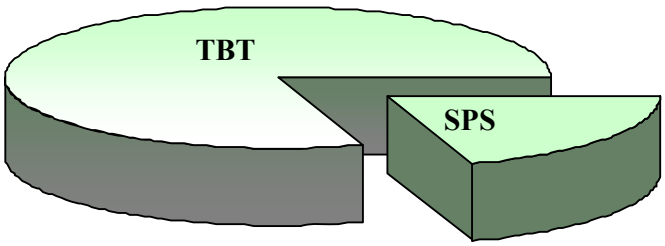
It is important to understand how the SPS Agreement relates to the TBT one. TBT Agreement is much broader since it applies to: all industrial and agricultural products. TBT does not apply to SPS Measures.

Table 9
SPS and TBT Measures

SPS Measures:	**TBT Measures:**

❖ **Human or animal health from food-borne risks;**
❖ **Human health from animal- or plant-carried diseases. Food additives, etc.;**
❖ **Animals and plants from pests or diseases;**
❖ **Examples:**
  ❖ **Pesticide residues;**
  ❖ **Food additives.**
	❖ **Human disease control (unless it's food safety);**
	❖ **Nutritional claims. Salt, wheat, nutritional problems;**
	❖ **Food packaging and quality examples:**
	  ❖ **Labelling (unless related to food safety);**
	  ❖ **Pesticide handling;**
	  ❖ **Seat belts.**

Chart 3
TBT and SPS Agreement Zones of Coverage



There are certain key provisions of the SPS Agreement that should be taken into consideration:

- Scientific justification (to convince panthers that risk is legitimate):
    - Risk assessment
    - Use international standards ("harmonization");
- Avoid arbitrary levels of protection ("consistency");
- Accept "equivalence";
- Recognize disease- and pest-free area;
- Notify and publish measures taken ("transparency");
- Fairness in control, inspection and approval procedures;
- Provision of technical assistance and special and differential treatment.

Scientific justification shall be based on scientific principles applied only to the extent necessary to protect human, animal or plant life or health (least trade restrictive). Measures should not be maintained without sufficient scientific evidence except as provided for in Article 5.7.

International harmonization

Members and acceding countries are encouraged by WTO the use of international standards in order to be able to meet criteria of scientific justification. Only few organisations can be named as standard-setting organizations: Codex-Joint FAO/WHO Codex Alimentarius Commission; OIE -World Organization for Animal Health; IPPC-International Plant Protection Convention (FAO).

Countries are allowed to be more protective, overriding the ceilings established by SPS Agreement and international standards. Protection in question, however, requires scientific justification or a risk evaluation.
In the WTO US-Canada case on the ban on EU meet exports known as Hormones case, EU failed to in using CODEX standards and was not able to justify its actions under national rules.

In a famous Salmon case between Australia and Canada, the former provided a thorough risk assessment report based on national standards that did not meet WTO criteria. It is thus not easy to build defense in the WTO DSB based upon national risk assessment criteria.

Risk assessment is not easy to justify for the government. It requires consideration of:

- Scientific evidence;
- Processes and production methods
- Inspection, sampling and testing methods
- Pest or disease prevalence
- Ecological and environmental conditions**;**
- Quarantine and other treatment.

Countries do not have to do risk assessments themselves. It is very important for them not to commit to the requirements, which they do not have to meet. Example is the risk assessment: there is no requirement for the country to provide its own (product-by-product) risk assessments, since it is a very costly and time-consuming process. Most of risk assessment studies have already been done and countries have the right to use them.

SPS Agreement is based on the following principles, which should be known by businesses:

- **Consistency.** Governments decide how much health risk they are willing to allow. Countries are not free to do it product by product. Australia, for example failed to justify SPS measures against imported salmon because, as was figured out by the panel it was importing live fish, which was put into territorial waters without any restrictive measures. Hereby measures used by Australia were protective and provided preferences for domestic industry excluding it from competition.

- **Least trade-restrictive principle.** Measures should not be no more trade restrictive than necessary. If a national industry is using modern SPS related technology in the production process, the legislation will most probable be focused on it and require importers to use similar equipment. But the same healthy product can be produced with much less expensive technology. Costly or hard to impose methods should thus be avoided.

- **Equivalence**. If the exporting country objectively demonstrates that its measures achieve the same affective level of protection as the importing country but the good was produced in a different way other WTO Members shall accept SPS measures of the other Member as equivalent. SPS Committee developed guidelines which help governments to access equivalence. CODEX also has relevant methodology. There are certain exceptions from this principle such as pests - or Disease-Free Areas. Business should influence their governments in establishing pests- or Disease-Free Areas: regions that are free of the diseases. Country shall negotiate preferences and notify areas where there are no diseases.

- **Transparency.** Members shall Establish an Enquiry Points- information points that answer SPS and TBT related questions. It should also notify other Members (and WTO) of newly changed laws and regulations. Notification procedures require at least 60 days reservations for relevant comments from interested Members.

- **Control, Inspection and Approval Procedures.** There should be no undue delays. Information requirements should be: limited to what is necessary and etc. GMO control system establish by the EU, for example, failed to correspond this principle since it created undue delays.

SPS Issues for Consideration in Accessions
SUMMARY

New standards, animal health and food safety regulations shall conform to SPS Agreement principles. Stand-still: generally agreed principle in WTO accession negotiations. Any new regulations countries put in place from the start of the accession should conform to SPS agreement.

Necessity: measures are applied only to the extent necessary to protect human, animal or plant health: Article 2.2.

Regulations Based on Science: regulations governing animal and plant health and food safety shall be based on scientific evidence: Articles 2.2, 3.3 and 5.2.

Harmonization: to the extent possible, members shall follow international standards, guidelines, and recommendations in establishing SPS measures: Articles 3.1, 3.3 and 3.4.
Equivalence: members shall recognize different measures that achieve the same level of protection: Article 4.

Risk Assessment: developing scientific evidence and conducting risk assessments to ensure that measures are based on science and applied only to the extent necessary to protect health: Article 5.1, 5.2 and 5.3.

Regional conditions: measures take into account the regional characteristics both of the areas from which products originate and the areas for which they are destined: Article 6 and Annexes A.6 and A.7.

Non-discrimination: measures do not arbitrarily or unjustifiably discriminate between different members or between domestic and foreign suppliers: Article 2.3, and Annex C.1(a) and (d).
Control, inspection and approval procedures no more restrictive, non-discriminative, etc.: Article 8 and Annex C.

Establishment and operation of a single Enquiry point: Article 7 and Annex B.3.

Transparency: notification and access to documentation: Articles 7 and Annex B, also G/SPS/7/Rev.2

(a) Identification of a national notification authority: Annex B.5(b) and Annex B.10.
(b) Development of guidance or law requiring publication of proposed measures at an early stage for comment: Annex B.5(a)
(c) Provision to provide copies of proposed measures to WTO Members: Annex B.5(c)
(d) Requirement of a reasonable period of time for comment and a process to take all comments into account: Annex B.5(d)

Accession process – general issues

- Following examples of Albania, Cambodia, FYROM, Kyrgyz Republic, Lithuania, Moldova, Nepal, Oman and Saudi Arabia, acceding countries should write action plans for compliance with SPS Agreement. It helps to answer the question: if the current legislation is not in conformity, which actions you should take to make it to correspond SPS Agreement requirements?

- Transition periods: Cambodia (3 years – Jan 2008). Nepal (2.5 years - 1 January 2007) should also be negotiated.

- Acceding countries should pursue reforms of veterinary, plant health and food safety laws: all applicant countries.

- Countries should become members of OIE (non-UN organisation), IPPC and Codex: Armenia, FYROM, Georgia, Lithuania, Moldova, etc.

Accession process – examples of some specific trade concerns

- Spanish olive oil restrictions due to benzopyrene contention - Saudi Arabia ban lifted after additional control measures; came up in SPS Committee for other GCC Members;

- Regulations on import from “non-Arab” countries by Saudi Arabia - violation of MFN principle;

- Ban on powdered milk in yoghurt and milk - Jordan - not based on science.

INTELLECTUAL PROPERTY: OPPORTUNITIES AND CHALLENGES FOR SMES

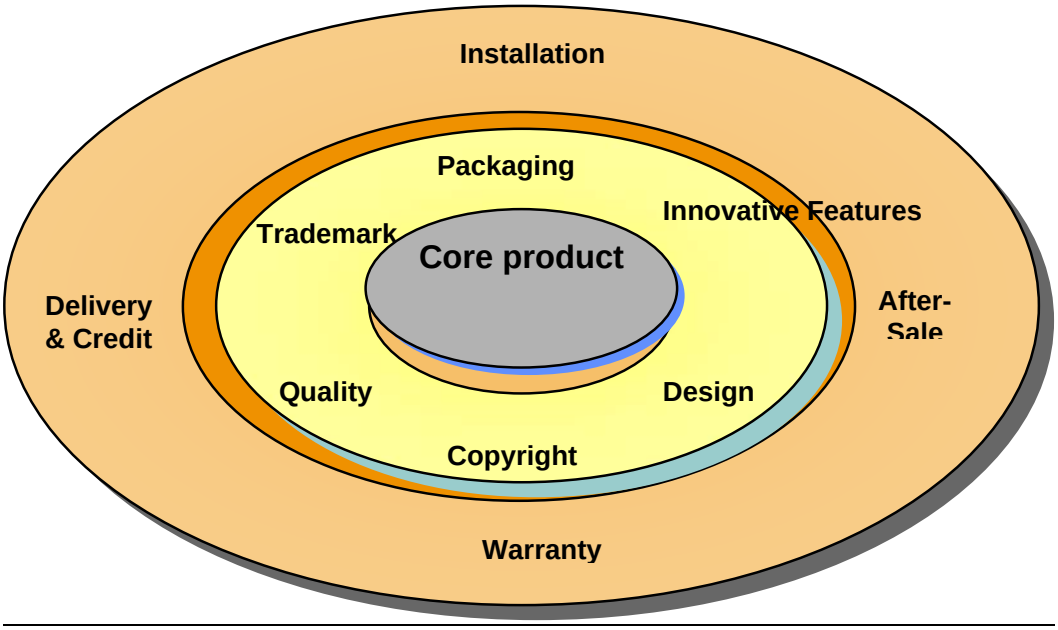
Based on the presentation of Tamara Nanayakkara, Small and Medium Sized Enterprises Division, World Intellectual Property Organization

Introduction

In the Old (industrial) Economy the main focus was on physical goods. Most countries were dependant on natural resources. The later are exhaustible, and more and more countries realize that greater reliance on know-how, knowledge, human creativity and innovation (infinite) is the key to economic growth. This idea of the New Economy can simply be proved by referring to statistical data: in 1998 intangible assets constituted 80% of value of Fortune 500[10] companies; it was estimated that by 2007, as much as 90% of the value of the world's top 2000 enterprises will consist of intellectual property".[11]

The following **features characterise the New Economy**: global market place; more demanding and fickle consumers; shorter product cycles; companies working through relationships and networks, differentiating products; increased competition; stricter regulation; out sourcing; pressure to do more with less.

Chart 4
Features that make a core product more competitive



[10] Ranking of the Fortune magazine
[11] PriceWaterhouseCoopers Research (2003).

In order to be competitive, SMEs need to produce goods and services that are: innovative, of good quality, low cost and capture the interest of the consumers. SMEs should also acquire new technology, improve management practices, develop creative and appealing designs, and effectively market their products and services. IP system allows SMEs to reach competitiveness of their products and increase profits.

IP system, in particular, provides **exclusivity** over the exploitation of innovative products and services, creative designs and business identifiers. It provides an appropriate **incentive** for investing in improving competitiveness and ensures a **competitive** market place, honest trade practices and overall national development. The main international Agreement which provides international enforcement of intellectual property rights is the TRIPS Agreement.

The TRIPS Agreement and its main features
Compulsory licensing as one of the flexibilities
on patent protection included into the WTO

The TRIPS Agreement obliges WTO members to implement wide range of intellectual property rights: copyright and related rights; trademarks; geographical indications; industrial designs; patents; layout-designs of integrated circuits. The Agreement builds upon and extends the provisions of the relevant international conventions (Berne, Rome, Paris conventions; Treaty on Intellectual Property in Respect of Integrated Circuits).

The effective implementation of the TRIPS Agreement encounters challenges in developing and transition economies because both (though for different reasons) traditionally tended to view intellectual property as a public, or partly public, rather than a private good.

In transition economies, most legislation on intellectual property rights is of very recent vintage. Extensive advice received from the World Intellectual Property Organization (WIPO) has normally ensured that the new legal texts correspond to the provisions of the relevant international conventions as well as the TRIPS Agreement. However, effective enforcement, which is central to the TRIPS Agreement, depends on effective institution building in the legal system as a whole, which, in turn, is part and parcel of the difficult process of systemic transformation.

Many developing countries have traditionally been reluctant to extend full protection to intellectual property created in high-income countries, particularly if this would have enabled those firms to extract monopoly rents on the use of technologies deemed crucial for development (such as pharmaceuticals to combat diseases). Problems in accession negotiations have arisen both from the reluctance of some applicants to fully account for the private good character of intellectual property rights in their legislation and from difficulties of enforcement of these rights.

Applicant countries have no choice but to bring their legislation and law enforcement in line with the provisions of the TRIPS Agreement. This may be helped by the fact that legitimate interests of developing countries are reflected in relevant provisions. For example, national legislation may permit the use of intellectual property by third parties without the owner's consent for public non-commercial purposes (Articles 30 and 31 of the TRIPS Agreement).

TRIPS Agreement read with Doha Declaration on TRIPS and Public Health provides for certain flexibilities, which can be used by Members for protecting their interests One of the flexibilities necessary to protect humans health is the compulsory licensing system. Compulsory licensing is when a government allows someone else to produce the patented product or process without the consent of the patent owner.

There are no established criteria on which reasons might justify the granting of compulsory licenses. In

fact, the paragraph 5 (b) of the Declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 by the Doha Ministerial Conference announces that: *"Each Member has the right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted"*.

However, if on the one hand, WTO Members have the right to determine the reasons by which a compulsory license might be granted, on the other, the TRIPS Agreements contains a number of conditions that have to be met in order to use this instrument. It does not limit the grounds on which such licenses may be issued, but it does impose certain obligations of a substantive and procedural nature[12].

One important condition provided for in Article 31 (b) of the TRIPS is that: *"such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time (…)*".A compulsory license can only be issued if this "voluntary license" fails.
However, the same provision also states that: *"(…) This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable (…)*".

It is important to consider the 2001 Declaration on the TRIPS Agreement and Public Health that states in its paragraph 5 (c): "*Each Member has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency*".

In any event, according to Article 31 (h) of the TRIPS Agreements establishes as a second condition for granting a compulsory license that: *"the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization"*. A common mistake about compulsory licensing is to consider it as the same as tearing up a patent.[13] It is important to clarify that in the first case the patent owner still has rights over the patent and shall be paid for it. However, the TRIPS Agreement does not fix criteria to assess an "adequate remuneration", leaving the grounds for the country that is granting the compulsory license to establish it.

A third important condition connected to the situation described above is provided for in Article 31 (j) of the TRIPS Agreements as follows: *"any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member"*.

Additional conditions for the granting of compulsory licenses are: scope and duration of the license must be limited to the purpose for which it was granted (Article 31, paragraph c); it must be non-exclusive (paragraph d) and non-assignable (paragraph e); and the patent holder may claim the termination of the license when circumstances which led to its grant cease to exist (paragraph g).

Article 31 (f) of the TRIPS Agreement governing the conditions for granting a compulsory license establishes that: *"any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use"*. Therefore, Members that do not have domestic pharmaceutical industries capable of manufacturing pharmaceuticals would be prevented from using compulsory licenses, making this instrument pretty useless for most developing countries.[14] This concern was addressed through an amendment of the TRIPS Agreement.

[12] ABBOTT, F.M., 2005. 'The WTO Medicines Decision: World Pharmaceutical Trade and the Protection of Public Health', p. 319.

[13] WTO. *TRIPS and Health: Frequently Asked Questions.* Compulsory licensing of pharmaceuticals and TRIPS. Available at: http://www.wto.org/english/tratop_e/trips_e/public_health_faq_e.htm

[14] ADDOR, F.,2003. WTO Breakthrough on Access to Medicines for Developing Countries: What Next? p. 1.

The question on whether these countries would have the right to issue compulsory licenses started to be addressed in 2001 by the Declaration on the TRIPS Agreement and Public Health that states in its paragraph 6 that: *"We recognize that WTO Members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing under the TRIPS Agreement. We instruct the Council for TRIPS to find an expeditious solution to this problem and to report to the General Council before the end of 2002"*.

The next step was the Decision on the Implementation of paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health, adopted by the General Council on 30 August 2003 (2003 Waiver). Paragraph 2 of this Decision states that: "*The obligations of an exporting Member under Article 31(f) of the TRIPS Agreement shall be waived with respect to the grant by it of a compulsory license to the extent necessary for the purposes of production of a pharmaceutical product(s) and its export to an eligible importing Member(s) (…)"*. This "waiver" which is subsequently replaced by the Amendment (although the Amendment is yet to come into force) means that exports under compulsory license to countries that cannot manufacture the pharmaceuticals are in principle lawful under the WTO, provided some conditions are met. In other words, the 2003 Waiver is the WTO legal instrument by which countries lacking capacity of domestic manufacturing pharmaceuticals can import under the compulsory license instrument.[15]

However, the 2003 Waiver also contains a number of conditions that have to be met in order to use the system. One of the most important conditions is that the importing Member shall make a notification to the Council for TRIPS, according to paragraph 2 (a) (iii), confirming that: *"where a pharmaceutical product is patented in its territory, it has granted or intends to grant a compulsory licenses in accordance with Article 31 of the TRIPS Agreement and the provisions of this Decision"*.

It follows that if the pharmaceutical product is patented in the territory of the importing Member, the obligation of granting a compulsory license arises. However, a footnote attached to this provision states that: "*This subparagraph is without prejudice to Article 66.1 of the TRIPS Agreement"*. The latter provision deals with a transitional period for least developed countries (LDCs) to adopt certain obligations contained in the TRIPS Agreement. In 2002, the Council for TRIPS adopted a decision extending the transition period under Article 66.1 for least-developed country Members for certain obligations with respect to pharmaceutical products, in the following terms: *"Least-developed country Members will not be obliged, with respect to pharmaceutical products, to implement or apply Sections 5 and 7 of Part II of the TRIPS Agreement or to enforce rights provided for under these Sections until 1 January 2016"*.

The practical outcome of the above provision is that LDCs do not have to protect pharmaceutical patents until 2016. So long as a medicine is not patented in a least-developed country, the government does not need to issue a compulsory license to import.[16]

Other conditions regarding the exporting Member include the notification of the granting of the license to the Council for TRIPS (paragraph 2 c); and that only the amount necessary to meet the needs of importing Member may be manufactured under the license and the entirety of this production shall be exported (paragraph 2bi).

How far the new acceding countries will be allowed to utilise these flexibilities will depend on the outcome of their negotiations during the process of accession. It is, therefore, important for the acceding countries to negotiate this specifically during the accession.

[15] It is important to highlight that the 2003 Waiver per se does not entirely solve the question. Exporting Members would likely have to change their domestic legislation to use the system. The original TRIPS provision that required production under compulsory license to be predominantly for the domestic market.

[16] WTO. *TRIPS and Health: Frequently Asked Questions.* Compulsory licensing of pharmaceuticals and TRIPS.

Businesses should be aware of the principal forms of Intellectual Property, such as:

Patents. A product or process providing a new way of doing something, or a new technical solution to a problem can be patented. New way of doing something can lower cost, create efficiencies, enhance performance, add new features etc. A patent provides an exclusive right to prevent others from using the invention for a maximum period of 20 years. Through exclusivity an opportunity is provided to recoup costs and make a profit

Copyrights. Copyright law grants authors, composers, and other creators legal protection for their creations usually referred to as "works." It protects books, music, films magazines, paintings, photographs, sculptures, architecture, computer programs, etc. It gives an author or creator certain rights for a limited period of time. They are economic rights, which enable the author to control the economic use of his work, and moral rights**,** which protect an author's reputation and integrity.

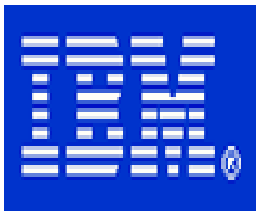
Trademarks. Trademark is a sign that distinguishes the goods and services of one enterprise from that of another. Trademark holder has a right to prevent others from using identical or similar marks with respect to goods or services that are identical or similar. Any ddistinctive words, letters, nnumerals, ppictures, shapes, ccolors can be registered as trademarks. In some countries: sounds, smells, three-dimensional marks can also be registered.

Advertising slogans of the Kentucky Fried Chicken (KFC)- "Its finger licking good"- is registered as a trademark.

An Italian businessman buys unmarked t-shirts from manufacturers of generic clothing, attaches his trademark (Pickwick®, which pictures a rebellious-looking teenager) and sells them to retail stores. Today the Pickwick® trademark is perceived by Italian teenagers as a synonym of style and quality. **Pickwick®** trademark is the most valuable asset of Italian businessman's company.

Pickwick® trademark

Interbrand 2007 Annual Survey of the world's most valuable global brands



Coca-Cola: 65 **Microsoft**: **58** **IBM: 57 b US$.**

Industrial Designs: Industrial design is the ornamental or aesthetic aspects of a product, which distinguish that product from competing products and make the product appealing to a consumer. Producer has the right to prevent others from using identical or similar designs. Design Rights adds value to the product by making it more appealing to consumers. Some products (e.g. furniture) are primarily sold on the basis of their appearance.

Geographical Indications (GIs): Goods that have certain quality or reputation due to the geographical region it comes from can be protected from counterfeiting. GIs protect local industries, preserve traditional ways of producing and build regional reputation and image. Geographical indications are generally applied pertaining to agricultural products. Bordeaux wine, Ceylon tea, Gruyere cheese, Swiss chocolates, Champagne, Colombian coffee are the examples of protected geographical indications.

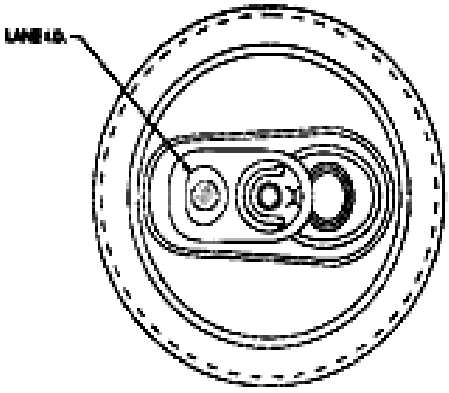
Trade secrets. Companies may, either because it is not patentable or because they prefer to do so, keep certain business information secret. If one has taken reasonable steps to keep such information secret and it has commercial value by virtue of being secret we can speak trade secret protection.

KFC, for example, keeps secret recipe of "11 herbs and spices" used in production of its products. Recipe is being kept in a bank vault. Few people know it, and they are contractually obligated to secrecy. The ingredients are mixed by two different companies in two different locations and then combined elsewhere in a third, separate location. To mix the final formula and ensure that no one outside KFC has the complete recipe a computer processing system is used.

It is important to keep in mind that IPR are territorial and, as such, and are only valid in the country or region in which they have been granted. Therefore applying for IPR in other countries is important if there is an intention to export.
IPRs allows holders to gain profit since there are not only rights but also assets of the company. Like any other asset they must be maintained, managed, exploited and enforced. Companies can gain profits from IPRs by selling them or providing licenses. They can also create joint ventures and strategic alliances or use business format franchising. One inventor, for example, licensed a can opening system to

Coca-Cola at 1/10 of a penny per can. During the period of validity of the patent the inventor obtained 148,000 UK pounds a day on royalties.

Can opening system



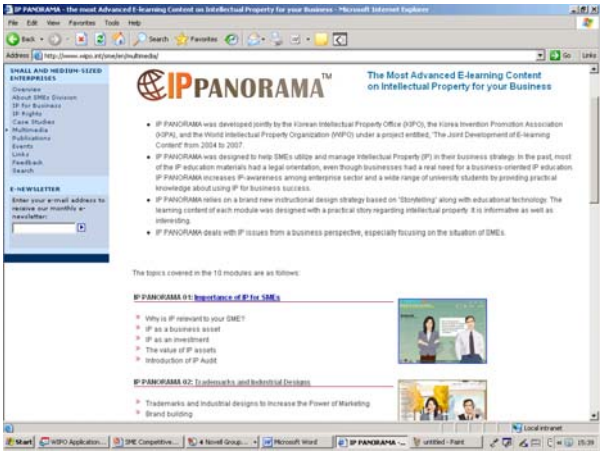
Challenges

It is a common trend worldwide that companies largely under-utilize the intellectual property system due to: perceived lack of relevance of the IP system; perceived high costs and complexity of IP system; limited awareness of the IP system and its usefulness; lack of qualified human resources to use the IP system. Countries can increase importance of IPRs protection and enforcement through: awareness-raising and Training Activities, Technological Information Services, Financial Assistance, Customised Advisory Services, Assistance on IP Exploitation and Commercialisation, Diagnosis of the IP needs of the enterprise (IP Audit).

Countries as well as businesses themselves should use the expertise of the specializes organizations in the field of intellectual property. WIPO, for example, has a Small and Medium Sized Enterprises Division, which provides SMEs with information on current trends and instruments of the global IPRs system. In particular WIPO publishes newsletters, which identify barriers, issues, challenges and opportunities of SMEs; develops software with an aim to spread IP knowledge among SMEs using e-technologies (“ IP PANORAMA”); provides business-oriented IP education and training in teaching and training institutions that support SMEs.

Countries should support and develop IP related educational programs and entitle academic institutions with the right to become IPRs holders for new inventions. Worldwide practice shows that such a strategy can contribute to development of new, technology orientated economy.

WIPO SME Division E-Products



WIPO SME Newsletter available at:
http://www.wipo.int/sme/en/documents/wipo_sme_newsletter.html

WIPO IP PANORAMA info.:
http://www.wipo.int/pressroom/en/articles/2007/article_0064.html

Case Study
IP righs of the universities and research centers in the USA

In 1980, the Bayh-Dole Act (PL 96-517, Patent and Trademark Act Amendments of 1980) created a uniform patent policy among the many federal agencies funding research in the USA. As a result of this law, universities retain ownership to inventions made under federally funded research. In return, universities are expected to file for patent protection and to ensure commercialization upon licensing. The royalties from such ventures are shared with the inventors; a portion is provided to the University and department/college; and the remainder is used to support the technology transfer process.

From a historical perspective, there was a need for reliable technology transfer mechanisms and for a uniform set of federal rules to make the process work. It was tough for the federal government to transfer technologies for which it had assumed ownership. In 1980, the federal government had approximately 30,000 patents of which only 5% led to new or improved products. Many patents were not being used as the government did not have the resources to develop and market the inventions. Thus, Bayh-Dole gave universities control of their inventions.

Prior to Bayh-Dole, fewer than 250 patents were issued to universities per year. In Fiscal Year (FY) 2000, there were over 330 U.S. and Canadian institutions and universities engaged in technology transfer. Technology transfer has helped to spawn new businesses, create industries and open new markets. In fact, core technologies, likely to spark new industries, often result from university patents. University-industry collaborations have helped to move new discoveries from the lab to the marketplace faster and more efficiently than ever before - ensuring that products and services based on federally funded research reach the public.

The reason that the Bayh-Dole act is so instrumental to university technology transfer is that it speeds up the commercialization process of federally funded university research and helps new industries to develop quicker. Examples range from Stanford's Cohen-Boyer patent on the basic gene splicing tools - to the Axel patents, from Columbia University which provided a completely new process for inserting genes into mammalian cells to make protein. Bayh-Dole has also enabled laboratory advances to become a significant factor in U.S. and Canadian industrial growth. The Bayh-Dole act is also vital to the university as a whole. University gross licensing revenues exceeded $200M in 1991 and by 1992 that number had risen to $250M. In FY 2000, U.S. and Canadian institution and universities Gross Licensing Income is reported in the AUTM survey at $1.26 Billion.

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

Based upon presentation by Mr. Dale Honeck, Counsellor, Trade in Services Division of the WTO

This paper seeks to provide an overview of developments to date in the services negotiations mandated under Article XIX of the GATS. As a starting point, the following section ("Relevant framework provisions") introduces main concepts of the GATS. The second section ("Current levels of commitments") then gives an account of the access commitments inscribed in Members existing schedules, while the third section ("Negotiating mandates") outlines the main provisions governing the ongoing services round, the first such round since the entry into force of the Agreement in 1995. The prospects of these negotiations are briefly discussed in the fourth section ("Scope for change"), leading to the final section ("State of play"), which describes what has been achieved in the request-and-offer process to date.

1. Relevant framework provisions

The creation of the GATS, as a result of the Uruguay Round, can be viewed as a milestone in the history of the multilateral trading system, providing for its extension to services. Given governments' long experience with GATT rules for merchandise trade, it is not surprising that the GATS embraces many similar concepts, including in particular the principle of most-favoured-nation treatment, one of the core elements of the multilateral trading system. Nevertheless, there are important differences as well, reflecting not least the peculiarities of services trade and the diversity of policy objectives and economic conditions among the WTO membership.

The GATS is far broader in coverage than the GATT. Its *definition of trade* is not confined to cross-border product flows ("mode 1"), but extends to cross-border movements of service consumers into another Member's territory (consumption abroad: "mode 2") as well as commercial establishment, mostly involving inward foreign investment (commercial presence: "mode 3"), and the presence of foreign natural persons to supply services ("mode 4"). The inclusion of modes 2 to 4 reflects the necessity that for many services to be traded, both supplier and user (consumer) must be simultaneously present to conduct the transaction. In turn, this also explains why, unlike the GATT, the GATS applies not only to the treatment of *products*, but also to the treatment of *suppliers*, i.e. producers and/or distributors.

The breadth of the Agreement's coverage and (potential) application is, however, balanced by much flexibility in Members' assumption of trade obligations. In particular, *market access* and *national treatment* - the two main parameters governing trading conditions - are guaranteed only in the sectors that a Member has listed in its schedule of specific commitments ('bottom-up' approach). And even such listing of sectors does not guarantee unqualified market access and national treatment. Rather, Members are free to attach limitations or to fully exclude one or more modes from the scope of their commitments ('top-down') and, thus, retain policy discretion.[17] The

[17] In the absence of commitments, some general obligations must be respected, including certain transparency requirements and most-favoured-nation (MFN) treatment. In other words, while no country is required to open its markets beyond the conditions specified in its schedule, any trade

flexibility to select sectors and to attach limitation creates almost unlimited scope for customizing commitments to national policy choices and negotiating objectives. Thus, while all WTO Members are legally required to submit a schedule of commitments (Article XX:1), it might be impossible to find Members with identical schedules.

Moreover, the GATS contain various provisions intended to accommodate a Member's general economic situation, domestic regulatory and institutional structures, and developmental needs. In particular, the negotiating mandate in Article XIX: 3 provides that "there shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV".[18]

2. Current levels of commitments

The Agreement's flexibility has apparently been used to a very large extent. Scheduled levels of commitments vary widely across Members, sectors, and modes of supply; and they are unlikely to provide an accurate picture of actual access conditions. Many governments were hesitant during the Uruguay Round to undertake ambitious commitments and, thus, forego policy discretion across a broader range of sectors. Such hesitations may be due to several factors, including lack of experience with international services agreements; the novelty and apparent complexity of core concepts of the GATS; insufficient knowledge of the economic situation in relevant sectors and ensuing uncertainties about what might constitute the 'national interest'; absence of specific requests from trading partners; and, possibly, objections of incumbent suppliers to their governments offering access guarantees at international level.

Chart 5 shows significant differences in the extent to which individual sectors have been included in schedules. Relevant decisions may have been influenced, first, by the degree to which particular sectors have traditionally been open to foreign participation (e.g. almost all schedules contain commitments on tourism, an area in which virtually all Members have long maintained comparatively liberal investment regimes.). Second, there is an apparent concentration of commitments on sectors of general infrastructural importance that provide economy-wide inputs, including financial

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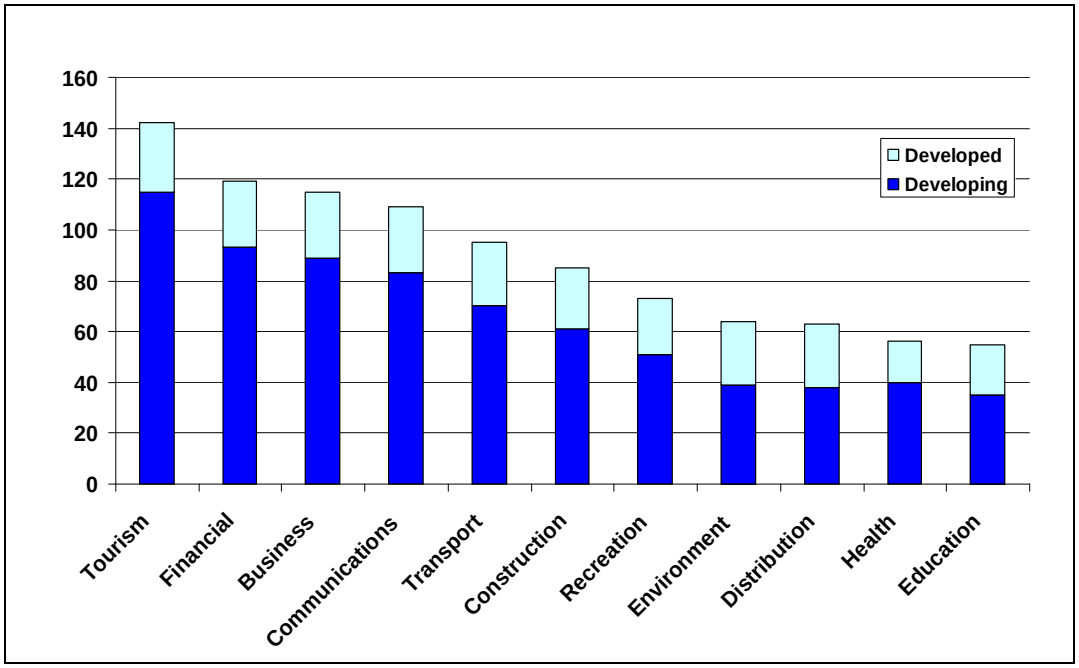
measure, even including complete access bans, must be operated in principle on an MFN basis. (However, the GATS also allows for certain exceptions, including for participants in Economic Integration Agreements.) For a more detailed explanation of the main structural elements of GATS see the Interactive Course: *General Agreement on Trade in Services*, available at www.wto.org/english/tratop_e/serv_e/cbt_course_e/signin_e.htm.

[18] Article IV:1: "The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members ... relating to: (a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis; (b) the improvement of their access to distribution channels and information networks; and (c) the liberalization of market access in sectors and modes of supply of export interest to them."
Article IV:3 requires that special priority be given to least-developed countries in the implementation of these provisions and particular account be taken of their serious difficulties in accepting negotiated commitments.

services, a broad range of business services, and communications services. Economic openness in these sectors, and the related flows of investment, skills and expertise, may have broad growth and efficiency effects. Related expectations may also explain why several developing countries that did not initially participate in the extended negotiations on basic telecommunications, concluded in 1997, nevertheless volunteered deeper commitments in the wake of these negotiations.

The diversity of sector commitments reflects in large part the scheduling decisions of developing countries, given their share (some 80 per cent) in the WTO membership. Table 10 shows the number of commitments inscribed by individual groups of Members, indicating strong differences between least-developed countries, developing and transition economies, as well as developed countries.[19] However, the commitments undertaken by new WTO Members, i.e. developing and transition economies that have joined since 1995, are comparable in number to those undertaken by developed Members. Also, these commitments tend to be deeper, i.e. subject to a smaller number of limitations, than those undertaken by other Members.[20]

Chart 5: Sector focus of current commitments



Note: The vertical axis displays the number of Members that have scheduled at least one sub-segment out of the eleven large sectors, from tourism to education, listed horizontally. EC Members are counted individually.

The averages for groups of Members may mask wide variations. This is particularly the case for least-developed and for developing economies. Some least-developed Members committed as many sectors as the group of developed Members on average (see third column in Table 10).

[19] However, such comparisons need to be interpreted with care. For example, they do not take into account differences in economic importance between sectors, nor the restrictiveness of the limitations that may have been attached in individual cases.
[20] WTO Secretariat (2001), Market Access: Unfinished Business (Special Studies 6); Geneva, p.114.

Table 10: Commitments of different groups of Members

Members	Average number of sectors committed per Member	Range (Lowest/highest number of scheduled sectors)
Least-developed economies	24	1 – 111
Developing & transition economies	52 (104)*	1 – 147 (58-147)*
Developed countries	105	86 – 115
Accessions since 1995	102	37 – 147
ALL MEMBERS	50	1 - 147

* Transition economies only.
Total number of sectors: ~160. Total number of Members: 148 (November 2005).

3. Negotiating mandates

Unlike the GATT, the GATS explicitly provides for future trade negotiations with a view to achieving "a progressively higher level of liberalization". According to Article XIX: 1, WTO Members are committed to enter into successive rounds of such negotiations, the first of which was to start "not later than five years from the date of entry into force of the WTO Agreement", i.e. 1 January 2000. The failure of the Seattle Ministerial Meeting in late 1999 thus did not prevent these negotiations from being launched. Nevertheless, the overall climate had deteriorated, and it took more than one year until delegations in Geneva were able to agree upon a negotiating mandate for services.[21]

In March 2001, the Council for Trade in Services, in Special Session, finally approved the 'Guidelines and Procedures for the Negotiations on Trade in Services'. The two-page document, in three parts, builds to a large extent on relevant GATS provisions, in particular Article IV ('Increasing Participation of Developing Countries') and Article XIX ('Negotiation of Specific Commitments'). The Guidelines' main content may be summarized as follows:[22]

1. Objectives and Principles

Confirmation of the objective of progressive liberalization as enshrined in relevant GATS provisions; appropriate flexibility for developing countries, with special priority to be given to least-developed countries; reference *to the needs of small and medium-sized service suppliers, particularly of developing countries*; and commitment to respect "the existing structure and principles of the GATS" (e.g. the bottom-up approach to scheduling and the four modes of supply).

2. Scope

No sectors or modes are excluded a priori; special attention to be given to export interests of developing countries; negotiation of existing MFN exemptions.

[21] The Seattle Draft Ministerial Declaration had contained such a mandate, which initially mustered broad support, but no longer proved acceptable to all Members as a basis for single-track negotiations.
[22] Elements that go beyond existing GATS provisions are in italics.

3. Modalities and Procedures

Current schedules as the starting point (rather than actual market conditions); *request-offer negotiations as the main approach*;[23] negotiating credit for autonomous liberalization based on common criteria;[24] *ongoing assessment of trade in services*;[25] *mandate for the Services Council to evaluate the results of the negotiations prior to their completion in the light of Article IV*.

In keeping with another mandate under Article XIX: 3, the Negotiating Guidelines were complemented later by the 'Modalities for the Special Treatment for Least-Developed Country Members'.[26] The Modalities are intended to ensure “maximum flexibility” for LDCs in the negotiations. Moreover, all Members are committed, *inter alia*, to exercising restraint in seeking commitments from LDCs as well as, in preparing their own schedules, giving special priority to sectors and modes of export interest to these Members. In turn, least-developed countries are called upon to indicate their priority sectors and modes so that these can be taken into account. Referring to mode 4, the Modalities recognize the potential benefits provided by the movement of natural persons to both sending and recipient countries. Further, Members envisage, to the extent possible and consistently with Article XIX of the GATS, to undertake commitments on that mode taking into account "all categories of natural persons identified by LDCs in their requests".

In view of the relatively detailed Negotiating Guidelines of March 2001 and the absorption of Members' attention by other issues, the Doha Ministerial Declaration essentially confined itself to endorsing the Guidelines and integrating the services negotiations, including the rule-making parts - concerning domestic regulation (pursuant to Article VI: 4), emergency safeguards (Article X), government procurement (Article XIII), and subsidies (Article XV) - in the wider framework of the Doha Development Agenda.[27] The Doha Declaration contains target dates for the circulation of initial requests (30 June 002) and initial offers (31 March 2003) of specific commitments, and envisages all negotiations, which form part of a single undertaking, to be concluded not later than 1 January 2005.

The Cancun Ministerial Meeting in early September 2003 marked a new setback in the progress of negotiations. The concluding Statement merely reaffirmed the Doha Declarations and Decisions and recommitted Members “to working to implement them fully and faithfully”.[28] Reflecting the lack of political impetus, the request-and-

[23] Article XIX:4 simply refers to the possibility of bilateral, plurilateral and multilateral negotiations to advance liberalization, but does not establish priorities between these approaches. 'Bilateral' negotiations are normally conducted in a request-offer context, where interested governments swap liberalization moves across sectors or, as the case may be, modes of supply. The Hong Kong Ministerial Declaration also provides for the possibility of 'plurilateral requested-offer' negotiations (see below).

[24] These criteria were developed later by the Services Council ('Modalities for the Treatment of Autonomous Liberalization' in WTO document TN/S/6 of 10 March 2003).

[25] This assessment was not initially conceived as an ongoing process, but should have been conducted for the purpose of establishing the Negotiating Guidelines (Article XIX:3).

[26] WTO document TN/S/13 of 4 September 2003.

[27] WTO document WT/MIN(01)/DEC/1 of 20 November 2001.

[28] WTO document WT/MIN(03)/20 of 23 September 2003.

offer process in services virtually ground to a halt in the wake of Cancun. It was not until mid-2004 that the so-called July Package (Doha Work Programme - Decision adopted by the General Council on 1 August 2004) injected new momentum into the negotiations.[29]

With regard to services, the July Package contained a target date of May 2005 for the submission of revised offers and adopted a set of recommendations that had been agreed before by the Council for Trade in Services (Special Session). These included recommendations for: Members that have not yet submitted initial offers to do so as soon as possible; ensuring a high quality of offers, in particular in sectors and modes of export interest to developing countries, with special attention being given to least-developed countries; intensifying efforts to conclude the rule-making negotiations under Articles VI.4, X, XIII and XV in accordance with their mandates and deadlines; and providing "targeted" technical assistance to developing countries with a view to enabling them to participate effectively.

The Hong Kong Ministerial Declaration of December 2005 reaffirms key principles and objectives of the services negotiations and calls on Members to intensify the negotiations in accordance with the objectives, approaches and timelines set out in Annex C to the Declaration with a view to expanding sectoral and modal coverage of commitments and improving their quality, with particular attention to export interests of developing countries. The Ministerial Declaration also acknowledges that LDCs are not expected to undertake new commitments.

Annex C contains a more detailed and ambitious set of negotiating objectives than any previous such document. (The introductory paragraph provides that "Members should be guided, to the maximum extent possible," by these objectives.). While ensuring appropriate flexibility for individual developing country Members, it provides a framework for the offering of new or improved commitments under each mode of supply, the treatment of MFN exemptions, and the scheduling and classification of commitments. Among other things, the Annex also calls on Members to intensify their efforts to conclude the rule-making negotiations, develop text for adoption on disciplines on domestic regulation, and develop methods for the full and effective implementation of the Modalities for the Special Treatment for Least-Developed Country Members. With respect to negotiating approaches, Annex C envisages that the request-offer negotiations are also pursued on a plurilateral basis and provides guidelines for the conduct of these negotiations. In keeping with this mandate, two rounds of plurilateral negotiations were conducted in early 2006, based on 22 collective requests that were formulated mostly along sector lines. The general feedback from the informal negotiating groups dealing with these requests was positive.[30]

The results of the plurilateral negotiations, as well as additional bilateral meetings, were expected to be reflected in a second round of revised offers. While Annex C

[29] WTO document WT/L/579 of 2 August 2004.

[30] Each group was initiated by a dozen or more Members with common negotiating interests vis-à-vis commercially promising trading partners. The latter were invited to discuss and consider these interests which were normally couched in the form of a common request. The Hong Kong Declaration introduced the plurilateral approach as a complement to bilateral request-offer negotiations, which continued to be used in order to pursue more specific national interests.

provided a timeline of 31 July 2006 for the submission of these offers, all negotiations under the Doha Development Agenda were suspended just one week before, due mostly to a stalemate over agricultural and non-agricultural market access (NAMA). It was not until February 2007 that the time appeared ripe for a full resumption of the negotiations. Members seem to share the view, however, that a new timeline for the second round of revised offers in services should be established only after a breakthrough in agriculture and NAMA has been achieved.

4. Scope for change in the current round

Many current schedules, with the possible exception of those submitted by several recently acceded countries, offer scope for significant improvements. While the Uruguay Round helped to establish a set of multilateral rules for services trade and the architecture for future negotiations, it will certainly not be remembered for any significant cuts in actual trade barriers. Possible exceptions are the extended negotiations in basic telecommunications (concluded in February 1997) and financial services (December 1997), in which some 70 Members participated. Although conducted on a sector-specific basis and thus not amenable to broader exchanges of concessions, these negotiations produced far more economically significant results than those that had initially emerged from the Uruguay Round.

While developing economies have undertaken fewer commitments on average than other Members, many of them have implemented sweeping reforms in recent years. Since such reforms have often been associated with profound institutional changes (e.g. the abolition of previous telecom, transport or insurance monopolies), they may prove difficult to reverse in any event and, thus, could be offered for commitments without particular risks. In turn, such commitments could add an element of credibility and stability to the reforms efforts, thus boost investor confidence and promote market adjustments in the overall economic interest.[31] It appears somewhat surprising in this context that a significant number of Members, including developing economies, have undertaken far more sweeping commitments under Economic Integration Agreements than contained in their offers under the GATS. However, the litmus test in the DDA services negotiations - in the form of a second round of revised offers – is still outstanding.

5. State of Play

There are no WTO documents that could be used to trace the *requests* that have been exchanged between Members. It is for individual governments to decide whom to approach, in what form, and what issues to raise under relevant GATS provisions (Annex on Article II Exemptions as well as Articles XVI, XVII and XVIII). There are no common information or notification requirements, let alone guidelines concerning the structure or content of requests. Apart from a joint request on Mode 4, it is thus difficult to assess, for example, to what extent least-developed participants have used this exercise to indicate the sectors and modes “that represent priority in their

[31] To bolster their negotiating position, the governments concerned might seek credit under, the 'Modalities for the Treatment of Autonomous Liberalization', adopted by the Services Council (Special Session) in March 2003.

development policies, so that Members take these priorities into account in the negotiations".[32]

Anecdotal evidence suggests that large developed countries have circulated requests to almost all other Members, covering a wide range of services, and that most economically advanced developing Members have actively participated in this process as well. There may thus be no WTO Member that has not received at least a handful of requests to date.

The *initial and revised offers* of new or improved commitments are made known to all WTO Members since the entire membership may be affected by these commitments' entry into force. Envisaged amendments are inscribed into the existing schedules and made commonly available via the WTO Secretariat.

While the services negotiations seem to have progressed smoothly to date, at least in procedural terms, some qualifications are needed.

First, the overall momentum has not been particularly impressive. At the target date of 31 March 2003, only 12 initial offers were available, to be followed by 26 more submissions prior to the Cancun Ministerial Meeting in early September 2003.[33] By end-November 2006, the total number had increased to 70, covering 94 WTO Members, and 30 revised offer had been received. Leaving LDCs aside, over 20 developing country Members would still have to submit an initial offer (February 2007).

Second, the regional distribution has remained somewhat uneven. While all developed Members and relatively many developing countries from Latin America and, despite some gaps, Asia have made contributions, the participation of other regions has been rather modest to date.

Third, there is also a strong sense of disappointment concerning the 'quality' of offers, both in terms of new sector inclusions and improvements of existing commitments.[34] The overall focus is on the sectors and modes that already dominate existing schedules, with relatively few significant changes in the pattern of bindings: sectors that had attracted a limited number of commitments are not attracting many offers, e.g., education, health distribution, postal-courier, road transport.

It is still too early to pass judgement at this juncture, however. Heeding the undertakings contained in Annex C of the Hong Kong Declaration, more Members may want to join in the process and submit offers, while others will be revising - and upgrading - what they have put on the table since March 2003. The final services package, including the results on rules, remains subject to various imponderables,

[32] WTO document TN/S/13 of 4 September 2003, para. 6. The joint request submitted by the LDC group among WTO Members is contained in JOB(06)/155 of 24 May 2006.
[33] Including one schedule for the then 15 Member States of the European Communities.
[34] In July 2005, the Chairman of the Council for Trade in Services, in Special Session, summarized the prevailing sentiment as follows: "Few, if any, new commercial opportunities would ensue for service suppliers. Most Members feel that the negotiations are not progressing as they should." WTO document TN/S/20 of 11 July 2005.

nevertheless. Given the concept of Single Undertaking, many Members will be viewing attentively what happens in others areas of the Doha Agenda.

Charts 6 and 7: Offers in Relation to Existing Commitments, January 2006