**Eighth Semester**
**BA LLB** **Paper code: LLB 404**
**Subject: International Trade Law**

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# Unit – I: Trade in Goods I

A. General Agreement on Tariffs and Trade (GATT)

General Agreement on Tariffs and Trade (GATT) was a multilateral agreement regulating international trade. According to its preamble, its purpose was the "substantial reduction of tariffs and other trade barriers and the elimination of preferences, on a reciprocal and mutually advantageous basis." It was negotiated during the United Nations Conference on Trade and Employment and was the outcome of the failure of negotiating governments to create the International Trade Organization (ITO). GATT was signed by 23 nations in Geneva on October 30, 1947 and took effect on January 1, 1948. It lasted until the signature by 123 nations in Marrakesh on April 14, 1994 of the Uruguay Round Agreements, which established the World Trade Organization (WTO) on January 1, 1995.

The original GATT text (GATT 1947) is still in effect under the WTO framework, subject to the modifications of GATT 1994

Annecy Round: 1949

The second round took place in 1949 in Annecy, France. 13 countries took part in the round. The main focus of the talks was more tariff reductions, around 5000 in total.

Torquay Round: 1951

The third round occurred in Torquay, England in 1950. Thirty-eight countries took part in the round. 8,700 tariff concessions were made totaling the remaining amount of tariffs to ¾ of the tariffs which were in effect in 1948. The contemporaneous rejection by the U.S. of the Havana Charter signified the establishment of the GATT as a governing world body.

Geneva Round: 1955–59

The fourth round returned to Geneva in 1955 and lasted until May 1956. Twenty-six countries took part in the round. $2.5 billion in tariffs were eliminated or reduced.

Dillon Round: 1960–62

The fifth round occurred once more in Geneva and lasted from 1960-1962. The talks were named after U.S. Treasury Secretary and former Under Secretary of State, Douglas Dillon, who first proposed the talks. Twenty-six countries took part in the round. Along with reducing over $4.9 billion in tariffs, it also yielded discussion relating to the creation of the European Economic Community (EEC).

Kennedy Round: 1962–67

The sixth round of GATT multilateral trade negotiations, held from 1963 to 1967. It was named after U.S. President John F. Kennedy in recognition of his support for the reformulation of the United States trade agenda, which resulted in the Trade Expansion Act of 1962. This Act gave the President the widest-ever negotiating authority.

As the Dillon Round went through the laborious process of item-by-item tariff negotiations, it became clear, long before the Round ended, that a more comprehensive approach was needed to deal with the emerging challenges resulting from the formation of the European Economic Community (EEC) and EFTA, as well as Europe's re-emergence as a significant international trader more generally.

Japan's high economic growth rate portended the major role it would play later as an exporter, but the focal point of the Kennedy Round always was the United States-EEC relationship. Indeed, there was an influential American view that saw what became the Kennedy Round as the start of a transatlantic partnership that might ultimately lead to a transatlantic economic community.

To an extent, this view was shared in Europe, but the process of European unification created its own stresses under which the Kennedy Round at times became a secondary focus for the EEC. An example of this was the French veto in January 1963, before the round had even started, on membership by the United Kingdom.

Another was the internal crisis of 1965, which ended in the Luxembourg Compromise. Preparations for the new round were immediately overshadowed by the Chicken War, an early sign of the impact variable levies under the Common Agricultural Policy would eventually have. Some participants in the Round had been concerned that the convening of UNCTAD, scheduled for 1964, would result in further complications, but its impact on the actual negotiations was minimal.

In May 1963 Ministers reached agreement on three negotiating objectives for the round:

(a) Measures for the expansion of trade of developing countries as a means of furthering their economic development,

(b) Reduction or elimination of tariffs and other barriers to trade, and

(c) Measures for access to markets for agricultural and other primary products.

The working hypothesis for the tariff negotiations was a linear tariff cut of 50% with the smallest number of exceptions. A drawn-out argument developed about the trade effects a uniform linear cut would have on the dispersed rates (low and high tariffs quite far apart) of the United States as compared to the much more concentrated rates of the EEC which also tended to be in the lower held of United States tariff rates.

The EEC accordingly argued for an evening-out or harmonization of peaks and troughs through its cerement, double cart and thirty: ten proposals. Once negotiations had been joined, the lofty working hypothesis was soon undermined. The special-structure countries (Australia, Canada, New Zealand and South Africa), so called because their exports were dominated by raw materials and other primary commodities, negotiated their tariff reductions entirely through the item-by-item method.

In the end, the result was an average 35% reduction in tariffs, except for textiles, chemicals, steel and other sensitive products; plus a 15% to 18% reduction in tariffs for agricultural and food products. In addition, the negotiations on chemicals led to a provisional agreement on the abolition of the American Selling Price (ASP). This was a method of valuing some chemicals used by the noted States for the imposition of import duties which gave domestic manufacturers a much higher level of protection than the tariff schedule indicated.

However, this part of the outcome was disallowed by Congress, and the American Selling Price was not abolished until Congress adopted the results of the Tokyo Round. The results on agriculture overall were poor. The most notable achievement was agreement on a Memorandum of Agreement on Basic Elements for the Negotiation of a World Grants Arrangement, which eventually was rolled into a new International Grains Arrangement.

The EEC claimed that for it the main result of the negotiations on agriculture was that they "greatly helped to define its own common policy". The developing countries, who played a minor role throughout the negotiations in this Round, benefited nonetheless from substantial tariff cuts particularly in non-agricultural items of interest to them.

Their main achievement at the time, however, was seen to be the adoption of Part IV of the GATT, which absolved them from according reciprocity to developed countries in trade negotiations. In the view of many developing countries, this was a direct result of the call at UNCTAD I for a better trade deal for them.

There has been argument ever since whether this symbolic gesture was a victory for them, or whether it ensured their exclusion in the future from meaningful participation in the multilateral trading system. On the other hand, there was no doubt that the extension of the Long-Term Arrangement Regarding International Trade in Cotton Textiles, which later became the Multi-Fiber Arrangement, for three years until 1970 led to the longer-term impairment of export opportunities for developing countries.

Another outcome of the Kennedy Round was the adoption of an Anti-dumping Code, which gave more precise guidance on the implementation of Article VI of the GATT. In particular, it sought to ensure speedy and fair investigations, and it imposed limits on the retrospective application of anti-dumping measures.

Kennedy Round took place from 1962-1967. $40 billion in tariffs were eliminated or reduced.

Tokyo Round: 1973–79

Reduced tariffs and established new regulations aimed at controlling the proliferation of non-tariff barriers and voluntary export restrictions. 102 countries took part in the round. Concessions were made on $190 billion worth.

Uruguay Round: 1986–94

The Uruguay Round began in 1986. It was the most ambitious round to date, hoping to expand the competence of the GATT to important new areas such as services, capital, intellectual property, textiles, and agriculture. 123 countries took part in the round. The Uruguay Round was also the first set of multilateral trade negotiations in which developing countries had played an active role.

Agriculture was essentially exempted from previous agreements as it was given special status in the areas of import quotas and export subsidies, with only mild caveats. However, by the time of the Uruguay round, many countries considered the exception of agriculture to be sufficiently glaring that they refused to sign a new deal without some movement on agricultural products. These fourteen countries came to be known as the "Cairns Group", and included mostly small and medium-sized agricultural exporters such as Australia, Brazil, Canada, Indonesia, and New Zealand.

The Agreement on Agriculture of the Uruguay Round continues to be the most substantial trade liberalization agreement in agricultural products in the history of trade negotiations. The goals of the agreement were to improve market access for agricultural products, reduce domestic support of agriculture in the form of price-distorting subsidies and quotas, eliminate over time export subsidies on agricultural products and to harmonize to the extent possible sanitary and phytosanitary measures between member countries.

**GATT and the World Trade Organization:**

Uruguay Round:

In 1993, the GATT was updated (*GATT 1994*) to include new obligations upon its signatories. One of the most significant changes was the creation of the World Trade Organization (WTO). The 75 existing GATT members and the European Communities became the founding members of the WTO on 1 January 1995. The other 52 GATT members rejoined the WTO in the following two years (the last being Congo in 1997). Since the founding of the WTO, 21 new non-GATT members have joined and 29 are currently negotiating membership. There are a total of 161 member countries in the WTO, with Laos and Tajikistan being new members as of 2013.

Of the original GATT members, Syria and the SFR Yugoslavia have not rejoined the WTO. Since FR Yugoslavia, (renamed as Serbia and Montenegro and with membership negotiations later split in two), is not recognised as a direct SFRY successor state; therefore, its application is considered a new (non-GATT) one. The General Council of WTO, on 4 May 2010, agreed to establish a working party to examine the request of Syria for WTO membership. The contracting parties who founded the WTO ended official agreement of the "GATT 1947" terms on 31

December 1995. Montenegro became a member in 2012, while Serbia is in the decision stage of the negotiations and is expected to become one of the newest members of the WTO in 2014 or in near future.

Whilst GATT was a set of rules agreed upon by nations, the WTO is an institutional body. The WTO expanded its scope from traded goods to include trade within the service sector and intellectual property rights. Although it was designed to serve multilateral agreements, during several rounds of GATT negotiations (particularly the Tokyo Round) plurilateral agreements created selective trading and caused fragmentation among members. WTO arrangements are generally a multilateral agreement settlement mechanism of GATT.

The GATT was concluded in 1947 and is now referred to as the GATT 1947. The GATT 1947 was last amended, last in 1965. Later on, additional disciplines were agreed to in side agreements, such as the Tokyo Round agreements, which did not amend the GATT 1947 as such, but only bound the GATT Contracting Parties that became a party to these side agreements.
The GATT 1947 was terminated in 1996. However, the provisions of the GATT 1947 as well as all legal instruments concluded under the GATT 1947 are integrated into the GATT 1994, subject to clarifications brought about by Understandings which also form integral parts of the GATT 1994.

**Scope of Application of the GATT 1994:**

The GATT 1994 is one of the multilateral agreements annexed to the WTO Agreement. It is an international treaty binding upon all WTO Members. The GATT 1994 is only concerned with trade in goods. The GATT 1994 aims at further liberalizing trade in goods through the reduction of tariffs and other trade barriers and eliminating discrimination.

**Structure of the GATT 1994:**

The GATT 1994 is a bizarre agreement. It "assembles" legal provisions from different sources. It consists of the provisions of the GATT 1947, of legal instruments concluded under the GATT 1947, of Understandings concluded during the Uruguay Round on the interpretation of the provision of the GATT 1947, and of the Marrakesh Protocol of Tariff Concessions. The GATT 1994 incorporates as is the provisions of the GATT 1947, and yet, it clarifies the nature and extent of some obligations set out in the GATT 1947 through the so-called "Understandings" and other legal instruments, including "other decisions" of the Contracting Parties to the GATT, which also form part of the GATT 1994. Furthermore, it changes the wording to be used when referring to the provisions of the GATT 1947. For instance, the phrase "Contracting Parties" in the GATT 1947 is now deemed to read "Members".

**Provisions of the GATT 1994:**

The provisions of the GATT 1947, now the provisions of the GATT 1994, consist of 38 articles numbered in roman digits – which are split up into four parts.
Part I of the GATT 1994 contains Articles I, enshrining the most-favoured-nation treatment obligation, and Article II, setting out the obligations applicable to the Schedules of Concessions of each WTO Member.
Part II of the GATT 1994 comprises Articles III through XXIII. Article III establishes the national treatment obligation. Articles IV to Article XIX cover mainly non-tariff measures, such as unfair trade practices (dumping and export subsidies), quantitative restrictions, restrictions for balance-of-payments reasons, state-trading enterprises, government assistance to economic development, and emergency safeguards measures. In addition, this Part also deals with numerous technical issues relating to the application of border measures. Articles XX and XXI deal with the possible exceptions to the GATT 1994, namely the general exceptions and those for security reasons.
Articles XXII and XXIII provide for dispute settlement procedures, which are further elaborated in the Understanding on the Principles Governing the Settlement of Disputes.

Part III of the GATT 1994 consists of Article XXIV through Article XXXV. Article XXIV concerns mainly customs unions and free trade areas and the responsibility of Members for the acts of their regional and local governments.
Articles XXVIII and XXVIII deal with the negotiation and renegotiation of tariff concessions.
Finally, Part IV of the GATT 1994 is entitled "Trade and Development" and aims to increase trade opportunities for developing country Members in various ways.

The provisions that deal with the entry into force, accession, amendments, withdrawal, non-application and joint action are no longer valid because they have been superseded by the relevant provisions of the WTO Agreement.

**Understandings and the Marrakesh Protocol:**

The six Understandings are legal documents which have been concluded during the Uruguay Round with a view to clarifying some obligations set out in the GATT 1947. They concern six particular GATT provisions, namely, the ones relating to the schedules of concessions, state-trading enterprises, balance-of- payments exceptions, regional trade agreements, waivers and the withdrawal of concessions.
Some of these Understandings aim to introduce further "transparency" obligations, while others seek to refine terms or paragraphs of the concerned GATT article. For instance, the Understanding on Article II:1(b) requires that the nature and level of any "other duties or charges" levied on bound tariff items, as referred to in that provision, be recorded in the Schedules of Concessions annexed to GATT 1994 against the tariff item to which they apply.
The Understanding on Article XVII (on state trading enterprises) sets out notification procedures and provides for subsequent reviews. The Understanding on Balance-of-Payments Provision essentially aims to clarify the existing obligations under the provisions of the GATT 1994, but it also provides for transparency measures and consultation requirements. The Understanding on

Article XXIV regarding regional trade agreements clarifies some of the subparagraphs to Article XXIV. The Understanding on Waivers sets out the elements to include in the request for a waiver and explains when and how it is possible to challenge the application of a waiver by a Member.
Finally, the Understanding on Article XXVIII (concession withdrawal) defines the phrase "principal supplying interest" of Article XXVIII of the GATT 1994. With respect to the Marrakesh Protocol to the GATT 1994, it is the legal instrument that incorporates the Schedules of Concessions and Commitments on Goods negotiated under the Uruguay Round into the GATT 1994. It confirms their authenticity and sets out their implementation modalities.

The principle of Non-Discrimination in the GATT 1994:

**Non-Discrimination: Definition**
The principle of non-discrimination, or, in other words, the requirement not to treat less favourably all "like" products, irrespective of their origin or whether they are imported or domestic, is the cornerstone of the WTO multilateral trading system. The non-discrimination obligation contributes to ensuring fair and predictable international trade relations. The principle of non-discrimination in international trade is two-faceted: it consists of the most-favoured-nation treatment obligation and the national treatment obligation.

**Most-Favoured-Nation Treatment Obligation: Article I**
The most-favoured-nation treatment obligation, widely known as the MFN treatment obligation, requires WTO Members not to discriminate between products originating in or destined for different countries. In simple terms, Country A should, for example, treat equally, or not discriminate between a product originating in Country B and a "like" product originating in Country C.

**National Treatment Obligation: Article III**
The national treatment obligation, commonly referred to as the NT obligation, requires WTO Members not to discriminate against imported products once the imported products have entered the domestic market. In other words, Country A should not treat products imported from Country B or C less favourably than its own "like" domestic products.

**The market access principle in the GATT 1994:**

**Market Access Barriers: Definition**
It is of utmost importance for traders to know whether and under which conditions their products have access to the markets of other countries. Market access for goods can be impeded or restricted in various ways. Barriers to market access include tariffs (also referred to as customs duties), quantitative restrictions (including quotas), other duties and financial charges, and other non-tariff measures, such as customs procedures, technical regulations, and sanitary and phytosanitary measures. It is noteworthy that the other non-tariff measures may include internal measures, while tariffs, other duties and financial charges and quantitative restrictions specifically concern border measures.

The GATT 1994 and other multilateral trade agreements provide for different rules for these different barriers. With regard to the applicable rules, this Section covers only the GATT 1994, but it should be noted that nearly all of the WTO Agreements embrace disciplines regarding barriers to market access.

In particular, this Section examines the rules on tariffs and tariff concessions, the rules on quantitative restrictions, the rules on other duties and financial charges, the rules on other tariff barriers, and finally, the rules on publication and administration of trade regulations.

**Tariffs:**
Tariffs or customs duties are financial charges imposed on goods at the time of and/or because of their importation. Market access is conditional upon the payment of these customs duties. Customs duties are either specific (amount based on weight, volume, etc.), or ad valorem (an amount based on value). Ad valorem customs duties have become most common. Tariffs or customs duties are not prohibited under the GATT 1994. This is in sharp contrast with the general prohibition on quantitative restrictions in Article XI of the GATT 1994. Tariffs represent the only instrument of protection generally allowed by the GATT 1994. WTO/GATT law has a clear preference for customs duties. Article XXVIII of the GATT 1994 encourages and calls upon WTO Members to negotiate the reduction of tariffs.

**Quantitative Restrictions:**
Quantitative restrictions (QRs) are measures which prohibit or restrict the quantity of a product that may be imported. A typical example of quantitative restrictions would be a measure allowing the importation of 10,000 widgets only. This quantitative restriction is also referred to as a quota. A tariff quota, however, is not a quota and is not considered to be a quantitative restriction. A tariff quota is a quantity which can be imported at a certain duty. For example, a Member may allow the importation of 5,000 widgets at 10 per cent ad valorem and any widgets imported above this quantity at 20 per cent ad valorem. Tariff quotas are not quantitative restrictions since they do not prohibit or restrict importation. They only subject imports to varying duties. The GATT 1994 sets out a general prohibition of quantitative restrictions. One of the main objectives of the GATT 1994 is to protect the domestic industry with tariffs only. The only permitted restrictions on trade are duties, taxes and other charges, and not prohibitions, quotas or licensing.

## B. Agreement on Agriculture:

The Agreement on Agriculture (AoA) is an international treaty of the World Trade Organization. It was negotiated during the Uruguay Round of the General Agreement on Tariffs and Trade, and entered into force with the establishment of the WTO on January 1, 1995.

While the volume of world agricultural exports has substantially increased over recent decades, its rate of growth has lagged behind that of manufactures, resulting in a steady decline in agriculture's share in world merchandise trade. In 1998, agricultural trade accounted for 10.5 per cent of total merchandise trade — when trade in services is taken into account, agriculture's

share in global exports drops to 8.5 per cent. However, with respect to world trade agriculture is still ahead of sectors such as mining products, automotive products, chemicals, textiles and clothing or iron and steel. Among the agricultural goods traded internationally, food products make up almost 80 per cent of the total. The other main category of agricultural products is raw materials. Since the mid-1980s, trade in processed and other high value agricultural products has been expanding much faster than trade in the basic primary products such as cereals.

Agricultural trade remains in many countries an important part of overall economic activity and continues to play a major role in domestic agricultural production and employment. The trading system plays also a fundamentally important role in global food security, for example by ensuring that temporary or protracted food deficits arising from adverse climatic and other conditions can be met from world markets.

**Trade policies prior to the WTO**:

Although agriculture has always been covered by the GATT, prior to the WTO there were several important differences with respect to the rules that applied to agricultural primary products as opposed to industrial products. The GATT 1947 allowed countries to use export subsidies on agricultural primary products whereas export subsidies on industrial products were prohibited. The only conditions were that agricultural export subsidies should not be used to capture more than an "equitable share" of world exports of the product concerned (Article XVI:3 of GATT). The GATT rules also allowed countries to resort to import restrictions (e.g. import quotas) under certain conditions, notably when these restrictions were necessary to enforce measures to effectively limit domestic production (Article XI:2(c) of GATT). This exception was also conditional on the maintenance of a minimum proportion of imports relative to domestic production.

However, in practice many non-tariff border restrictions were applied to imports without any effective counterpart limitations on domestic production and without maintaining minimum import access. In some cases this was achieved through the use of measures not specifically provided for under Article XI. In other cases it reflected exceptions and country-specific derogations such as grandfather clauses, waivers and protocols of accession. In still other cases non-tariff import restrictions were maintained without any apparent justification.

The result of all this was a proliferation of impediments to agricultural trade, including by means of import bans, quotas setting the maximum level of imports, variable import levies, minimum import prices and non-tariff measures maintained by state trading enterprises. Major agricultural products such as cereals, meat, dairy products, sugar and a range of fruits and vegetables have faced barriers to trade on a scale uncommon in other merchandise sectors.

In part, this insulation of domestic markets was the result of measures originally introduced following the collapse of commodity prices in the 1930s Depression. Furthermore, in the aftermath of the Second World War many governments were concerned primarily with increasing domestic agricultural production so as to feed their growing populations. With this objective in mind and in order to maintain a certain balance between the development of rural

and urban incomes, many countries, particularly in the developed world, resorted to market price support — farm prices were administratively raised. Import access barriers ensured that domestic production could continue to be sold. In response to these measures and as a result of productivity gains, self-sufficiency rates rapidly increased. In a number of cases, expanding domestic production of certain agricultural products not only replaced imports completely but resulted in structural surpluses. Export subsidies were increasingly used to dump surpluses onto the world market, thus depressing world market prices. On the other hand, this factor, plus the effects of overvalued exchange rates, low food price policies in favour of urban consumers and certain other domestic measures, reduced in a number of developing countries the incentive for farmers to increase or even maintain their agricultural production levels.

**Uruguay Round agricultural negotiations**:

In the lead-up to the Uruguay Round negotiations, it became increasingly evident that the causes of disarray in world agriculture went beyond import access problems which had been the traditional focus of GATT negotiations. To get to the roots of the problems, disciplines with regard to all measures affecting trade in agriculture, including domestic agricultural policies and the subsidization of agricultural exports, were considered to be essential. Clearer rules for sanitary and phytosanitary measures were also considered to be required, both in their own right and to prevent circumvention of stricter rules on import access through unjustified, protectionist use of food safety as well as animal and plant health measures.

The agricultural negotiations in the Uruguay Round were by no means easy — the broad scope of the negotiations and their political sensitivity necessarily required much time in order to reach an agreement on the new rules, and much technical work was required in order to establish sound means to formalise commitments in policy areas beyond the scope of prior GATT practice. The Agreement on Agriculture and the Agreement on the Application of Sanitary and Phytosanitary Measures were negotiated in parallel, and a Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-developed and Net Food-importing Developing Countries also formed part of the overall outcome.

**Introduction to the Agreement on Agriculture:**

The Agreement on Agriculture, (the "Agreement"), came into force on 1 January 1995. The preamble to the Agreement recognizes that the agreed long-term objective of the reform process initiated by the Uruguay Round reform programme is to establish a fair and market-oriented agricultural trading system. The reform programme comprises specific commitments to reduce support and protection in the areas of domestic support, export subsidies and market access, and through the establishment of strengthened and more operationally effective GATT rules and disciplines. The Agreement also takes into account non-trade concerns, including food security and the need to protect the environment, and provides special and differential treatment for developing countries, including an improvement in the opportunities and terms of access for agricultural products of particular export interest to these Members.

## C. Agreement on Sanitary and Phytosanitary Measures:

The **Agreement on the Application of Sanitary and Phytosanitary Measures**, also known as the **SPS Agreement**, is an international treaty of the World Trade Organization. It was negotiated during the Uruguay Round of the General Agreement on Tariffs and Trade, and entered into force with the establishment of the WTO at the beginning of 1995. Broadly, the sanitary and phytosanitary ('SPS') measures covered by the agreement are those aimed at the protection of human, animal or plant life or health from certain risks.

Under the SPS agreement, the WTO sets constraints on member-states' policies relating to food safety (bacterial contaminants, pesticides, inspection and labelling) as well as animal and plant health (phytosanitation) with respect to imported pests and diseases. There are 3 standards organizations who set standards that WTO members should base their SPS methodologies on. As provided for in Article 3, they are the Codex Alimentarius Commission (Codex), World Organization for Animal Health (OIE) and the Secreatariat of the International Plant Protection Convention (IPPC).

The treaty targets 'scientifically unfounded' barriers to trade disguised as health and safety regulations.

The SPS agreement is closely linked to the Agreement on Technical Barriers to Trade, which was signed in the same year and has similar goals. The TBT Emerged from the Tokyo Round of WTO negotiations and was negotiated with the aim of ensuring non-discrimination in the adoption and implementation of technical regulations and standards

### History and Framework of the SPS Agreement:

As GATT's preliminary focus had been lowering tariffs, the framework that preceded the SPS Agreement was not adequately equipped to deal with the problems of non-tariff barriers (NTBs) to trade and the need for an independent agreement addressing this became critical.[5] The SPS Agreement is an ambitious attempt to deal with NTBs arising from cross-national differences in technical standards without diminishing governments prerogative to implement measures to guard against diseases and pests

### Article 1: General Provisions:

1. This Agreement applies to all sanitary andphytosanitary international trade. Such measures shall be developed and applied in accordance with the provisions of this Agreement.

2. For the purposes of this Agreement, the definitions provided in Annex A shall apply.

3. The annexes are an integral part of this Agreement.

4. Nothing in this Agreement shall affect the rights of Members under the Agreement on

Technical Barriers to Trade with respect to measures not within the scope of this Agreement.

**Article 2: Basic Rights and Obligations:**

1. Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement.

2. Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5.

3. Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.

4. Sanitary or phytosanitary measures which conform to the relevant provisions of this Agreement shall be presumed to be in accordance with the obligations of the Members under the provisions of GATT 1994 which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b).

**Article 3: Harmonization:**

1. To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this Agreement, and in particular in paragraph 3.

2. Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994.

3. Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection a Member determines to be appropriate in accordance with the relevant provisions of paragraphs 1 through 8 of Article 5.(**2**) Notwithstanding the above, all measures which result in a level of sanitary or phytosanitary protection different from that which would be achieved by measures based on international standards, guidelines or recommendations shall not be inconsistent with any other

provision of this Agreement.

4. Members shall play a full part, within the limits of their resources, in the relevant international organizations and their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention, to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.

5. The Committee on Sanitary and Phytosanitary Measures provided for in paragraphs 1 and 4 of Article 12 (referred to in this Agreement as the "Committee") shall develop a procedure to monitor the process of international harmonization and coordinate efforts in this regard with the relevant international organizations.

**Article 4 : Equivalence:**

1. Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

2. Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures.

**Article 5: Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection:**

1. Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.

2. In the assessment of risks, Members shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest — or disease — free areas; relevant ecological and environmental conditions; and quarantine or other

treatment.

3. In assessing the risk to animal or plant life or health and determining the measure to be applied for achieving the appropriate level of sanitary or phytosanitary protection from such risk, Members shall take into account as relevant economic factors: the potential damage in terms of loss of production or sales in the event of the entry, establishment or spread of a pest or disease; the costs of control or eradication in the territory of the importing Member; and the relative cost-effectiveness of alternative approaches to limiting risks.

4. Members should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimizing negative trade effects.

5. With the objective of achieving consistency in the application of the concept of appropriate level of sanitary or phytosanitary protection against risks to human life or health, or to animal and plant life or health, each Member shall avoid arbitrary or unjustifiable distinctions in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade. Members shall cooperate in the Committee, in accordance with paragraphs 1, 2 and 3 of Article 12, to develop guidelines to further the practical implementation of this provision. In developing the guidelines, the Committee shall take into account all relevant factors, including the exceptional character of human health risks to which people voluntarily expose themselves.

6. Without prejudice to paragraph 2 of Article 3, when establishing or maintaining sanitary or phytosanitary measures to achieve the appropriate level of sanitary or phytosanitary protection, Members shall ensure that such measures are not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility.(**3**)

7. In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.

8. When a Member has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by another Member is constraining, or has the potential to constrain, its exports and the measure is not based on the relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the Member

maintaining the measure.

**Article 6: Adaptation to Regional Conditions, Including Pest — or Disease — Free Areas and Areas of Low Pest or Disease Prevalence:**

1. Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area — whether all of a country, part of a country, or all or parts of several countries — from which the product originated and to which the product is destined. In assessing the sanitary or phytosanitary characteristics of a region, Members shall take into account, inter alia, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.

2. Members shall, in particular, recognize the concepts of pest — or disease-free areas and areas of low pest or disease prevalence. Determination of such areas shall be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.

3. Exporting Members claiming that areas within their territories are pest — or disease-free areas or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing Member that such areas are, and are likely to remain, pest— or disease—free areas or areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

**Article 7: Transparency:**

Members shall notify changes in their sanitary or phytosanitary measures and shall provide information on their sanitary or phytosanitary measures in accordance with the provisions of Annex B.

**Article 8: Control, Inspection and Approval Procedures:**

Members shall observe the provisions of Annex C in the operation of control, inspection and approval procedures, including national systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs, and otherwise ensure that their procedures are not inconsistent with the provisions of this Agreement.

**Article 9: Technical Assistance:**

1. Members agree to facilitate the provision of technical assistance to other Members,

especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, inter alia, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.

2. Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved.

**Article 10: Special and Differential Treatment:**

1. In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members.

2. Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports.

3. With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee is enabled to grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs.

4. Members should encourage and facilitate the active participation of developing country Members in the relevant international organizations.

**Article 11: Consultations and Dispute Settlement:**

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.

2. In a dispute under this Agreement involving scientific or technical issues, a panel should seek advice from experts chosen by the panel in consultation with the parties to the dispute. To this end, the panel may, when it deems it appropriate, establish an advisory technical experts group, or consult the relevant international organizations, at

the request of either party to the dispute or on its own initiative.

3. Nothing in this Agreement shall impair the rights of Members under other international agreements, including the right to resort to the good offices or dispute settlement mechanisms of other international organizations or established under any international agreement.

**Article 12:Administration:**

1. A Committee on Sanitary and Phytosanitary Measures is hereby established to provide a regular forum for consultations. It shall carry out the functions necessary to implement the provisions of this Agreement and the furtherance of its objectives, in particular with respect to harmonization. The Committee shall reach its decisions by consensus.

2. The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary or phytosanitary issues. The Committee shall encourage the use of international standards, guidelines or recommendations by all Members and, in this regard, shall sponsor technical consultation and study with the objective of increasing coordination and integration between international and national systems and approaches for approving the use of food additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs.

3. The Committee shall maintain close contact with the relevant international organizations in the field of sanitary and phytosanitary protection, especially with the Codex Alimentarius Commission, the International Office of Epizootics, and the Secretariat of the International Plant Protection Convention, with the objective of securing the best available scientific and technical advice for the administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided.

4. The Committee shall develop a procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations. For this purpose, the Committee should, in conjunction with the relevant international organizations, establish a list of international standards, guidelines or recommendations relating to sanitary or phytosanitary measures which the Committee determines to have a major trade impact. The list should include an indication by Members of those international standards, guidelines or recommendations which they apply as conditions for import or on the basis of which imported products conforming to these standards can enjoy access to their markets. For those cases in which a Member does not apply an international standard, guideline or recommendation as a condition for import, the Member should provide an indication of the reason therefor, and, in particular, whether it considers that the standard is not stringent enough to provide the appropriate level of sanitary or phytosanitary protection. If a Member revises its position, following its indication of the use of a standard, guideline or recommendation as a condition for

import, it should provide an explanation for its change and so inform the Secretariat as well as the relevant international organizations, unless such notification and explanation is given according to the procedures of Annex B.

5. In order to avoid unnecessary duplication, the Committee may decide, as appropriate, to use the information generated by the procedures, particularly for notification, which are in operation in the relevant international organizations.

6. The Committee may, on the basis of an initiative from one of the Members, through appropriate channels invite the relevant international organizations or their subsidiary bodies to examine specific matters with respect to a particular standard, guideline or recommendation, including the basis of explanations for non-use given according to paragraph 4.

7. The Committee shall review the operation and implementation of this Agreement three years after the date of entry into force of the WTO Agreement, and thereafter as the need arises. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, inter alia, to the experience gained in its implementation.

**Article 13: Implementation:**

Members are fully responsible under this Agreement for the observance of all obligations set forth herein. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies. Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement. Members shall ensure that they rely on the services of non-governmental entities for implementing sanitary or phytosanitary measures only if these entities comply with the provisions of this Agreement.

**Article 14: Final Provisions:**

The least-developed country Members may delay application of the provisions of this Agreement for a period of five years following the date of entry into force of the WTO Agreement with respect to their sanitary or phytosanitary measures affecting importation or imported products. Other developing country Members may delay application of the provisions of this Agreement, other than paragraph 8 of Article 5 and Article 7, for two years following the date of entry into force of the WTO Agreement

with respect to their existing sanitary or phytosanitary measures affecting importation or imported products, where such application is prevented by a lack of technical expertise, technical infrastructure or resources.

**D. Agreement on Technical Barriers to Trade:**

The Agreement on Technical Barriers to Trade, commonly referred to as the TBT Agreement, is an international treaty administered by the World Trade Organization. It was last renegotiated during the Uruguay Round of the General Agreement on Tariffs and Trade, with its present form entering into force with the establishment of the WTO at the beginning of 1995, binding on all WTO members.

**Purpose:**

The TBT exists to ensure that technical regulations, standards, testing, and certification procedures do not create unnecessary obstacles to trade. The agreement prohibits technical requirements created in order to limit trade, as opposed to technical requirements created for legitimate purposes such as consumer or environmental protection. In fact, its purpose is to avoid unnecessary obstacles to international trade and to give recognition to all WTO members to protect legitimate interests according to own regulatory autonomy, although promoting the use of international standards. The list of legitimate interests that can justify a restriction in trade is not exhaustive and it includes protection of environment, human and animal health and safety.

**Structure of the Agreement on Technical Barriers to Trade:**

The TBT Agreement can be divided into five parts. The first part defines the scope of the Agreement which includes "all products, including industrial and agricultural" but not sanitary and phytosanitary measures. The second part sets out the obligations and principles concerning technical regulations. The third part addresses conformity and assessments of conformity. The fourth part deals with information and assistance, including the obligation of nations to provide assistance to each other in drafting technical regulations. Lastly the fifth part provides for the creation of the Committee on Technical Barriers to Trade and sets out the dispute settlement limitation of the acceptance of conformity assessment results to those produced by designated bodies in the exporting Member.

# Unit-II: Trade in Goods II:

## A. Agreement on Trade-Related Investment Measures:

The Agreement on Trade-Related Investment Measures (TRIMs) are rules that apply to the domestic regulations a country applies to foreign investors, often as part of an industrial policy. The agreement was agreed upon by all members of the World Trade Organization. The

agrepement was concluded in 1994 and came into force in 1995. The WTO was not established at that time, it was its predecessor, the GATT (General Agreement on Trade and Tariffs. The WTO came about in 1994-1995. Policies such as local content requirements and trade balancing rules that have traditionally been used to both promote the interests of domestic industries and combat restrictive business practices are now banned. Trade-Related Investment Measures is the name of one of the four principal legal agreements of the WTO trade treaty. TRIMs are rules that restrict preference of domestic firms and thereby enable international firms to operate more easily within foreign markets.

**How it came in action:**

In the late 1980s, there was a significant increase in foreign direct investment throughout the world. However, some of the countries receiving foreign investment imposed numerous restrictions on that investment designed to protect and foster domestic industries, and to prevent the outflow of foreign exchange reserves.

Examples of these restrictions include local content requirements (which require that locally produced goods be purchased or used), manufacturing requirements (which require the domestic manufacturing of certain components), trade balancing requirements, domestic sales requirements, technology transfer requirements, export performance requirements (which require the export of a specified percentage of production volume), local equity restrictions, foreign exchange restrictions, remittance restrictions, licensing requirements, and employment restrictions. These measures can also be used in connection with fiscal incentives as opposed to requirement. Some of these investment measures distort trade in violation of GATT Articles III and XI, and are therefore prohibited.

Until the completion of the Uruguay Round negotiations, which produced a well-rounded Agreement on Trade-Related Investment Measures (hereinafter the "TRIMs Agreement"), the few international agreements providing disciplines for measures restricting foreign investment provided only limited guidance in terms of content and country coverage. The OECD Code on Liberalization of Capital Movements, for example, requires members to liberalize restrictions on direct investment in a range of areas. The OECD Code's efficacy, however, is limited by the numerous reservations made by each of the members.

In addition, there are other international treaties, bilateral and multilateral, under which signatories extend most-favored-nation treatment to direct investment. Only a few such treaties, however, provide national treatment for direct investment. The Asia-Pacific Economic Cooperation Investment Principles adopted in November 1994 are general rules for investment but they are non-binding.

Article 1: Coverage:
This Agreement applies to investment measures related to trade in goods only (referred to in this Agreement as "TRIMs").
Article 2: National Treatment and Quantitative Restrictions:
1.Without prejudice to other rights and obligations under GATT 1994, no Member shall apply

any TRIM that is inconsistent with the provisions of Article III or Article XI of GATT 1994.
2.An illustrative list of TRIMs that are inconsistent with the obligation of national treatment provided for in paragraph 4 of Article III of GATT 1994 and the obligation of general elimination of quantitative restrictions provided for in paragraph 1 of Article XI of GATT 1994 is contained in the Annex to the Agreement.
Article 3: Exceptions:
All exceptions under GATT 1994 shall apply, as appropriate, to the provisions of this Agreement.
Article 4: Developing Country Members:
A developing country Member shall be free to deviate temporarily from the provisions of Article 2 to the extent and in such a manner as Article XVIII of GATT 1994, the Understanding on the Balance-of- Payments Provisions of GATT 1994, and the Declaration on Trade Measures Taken for Balance-of- Payments Purposes adopted on 28 November 1979 (BISD 26S/205-209) permit the Member to deviate from the provisions of Articles III and XI of GATT 1994.
Article 7:Committee on Trade-Related Investment Measures

1. A Committee on Trade-Related Investment Measures (referred to in this Agreement as the "Committee") is hereby established, and shall be open to all Members.

The Committee shall elect its own Chairman and Vice-Chairman, and shall meet not less than once a year and otherwise at the request of any Member.

2. The Committee shall carry out responsibilities assigned to it by the Council for Trade in Goods and shall afford Members the opportunity to consult on any matters relating to the operation and implementation of this Agreement.
3. The Committee shall monitor the operation and implementation of this Agreement and shall

report thereon annually to the Council for Trade in GoodS.

Article 8: Consultation and Dispute Settlement
The provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, shall apply to consultations and settlement of disputes under this agreement.

**B. Agreement on Subsidies and Countervailing Measures:**

**Overview of rules:**
(1) Subsidies and Countervailing Measures:
Subsidies have been provided widely throughout the world as a tool for realizing government policies, in such forms as grants (normal subsidies), tax exemptions, low interest financing, investments and export credits. There are six primary categories of subsidies, divided by purpose: 1) export subsidies, 2) subsidies contingent upon the use of domestic over imported goods, 3) industrial promotion subsidies, 4) structural adjustment subsidies, 5) regional development subsidies, and 6) research and development subsidies. By beneficiary, there are two primary categories: 1) subsidies that are not limited to specific businesses or industries (non-specific subsidies), and 2) subsidies that are limited to specific businesses and industries (specific subsidies). Although governments articulate ostensibly legitimate goals for their subsidy programmes, it is widely perceived that government subsidies may give excessive protection to

domestic industries. In such cases, subsidies act as a barrier to trade, by distorting the competitive relationships that develop naturally in a free trading system. Exports of subsidized products may injure the domestic industry producing the same product in the importing country. Similarly, subsidized products may gain artificial advantages in third- country markets and impede other countries' exports to those markets.

Because of this potential the WTO Agreements prohibit with respect to industrial goods any export subsidies and subsidies contingent upon the use of domestic over imported goods, as having a particularly high trade-distorting effect. Furthermore, even for subsidies that are not prohibited, it allows Member countries importing subsidized goods to enact countermeasures, such as countervailing duties if such goods injure the domestic industry and certain procedural requirements are met . For agricultural products, the WTO Agreements requires obligations such as reducing export subsidies and domestic supports.

(2) Legal Framework:

Concerning the legal framework for subsidies, the basic principles are provided in Articles VI and XVI of the GATT. Furthermore, there is the Agreement on Subsidies and Countervailing Measures (hereinafter the "Subsidies Agreement") as the implementation agreement for subsidies in general. The Subsidies Agreement was negotiated during the Uruguay Round to provide new disciplines in place of the Agreement on the Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (hereinafter the "Subsidies Code") adopted during the Tokyo Round. Compared to the Subsidies Code, the Subsidies Agreement provides more explicit definitions of subsidies and stronger, clearer disciplines on countervailing duty. There have also been some sector-specific discussions of subsidies. The Uruguay Round resulted in the Agreement on Agriculture, which includes provisions for reducing domestic subsidies and exports subsidies for agricultural products. Running parallel to the Uruguay. Round were negotiations on subsidy disciplines in individual industries, particularly revisions to the Agreement on Trade in Civil Aircraft and a Multilateral Steel Agreement (MSA). These negotiations have not been concluded. The Subsidies Agreement provides a definition of subsidies and classifies of three categories of subsidies according to purpose and nature. Furthermore, the Agreement defines the relationship between countervailing measures and rem.edies for each type of subsidy, provides special and differential treatments for developing country members, and provides transitional arrangements for members in the process of transformation from a centrally- planned economy to a market economy. Below is a more detailed outline of the more important aspects of the Subsidies Agreement.

**Definition of Subsidies (Article 1):**

In the Subsidies Agreement, a subsidy shall be deemed to exist if: "there is a financial contribution (i.e., a fiscal burden) by a government or any public body within the territory of a Member" or "there is any form of income or price support in the sense of Article XVI of GATT 1994," and "a benefit is thereby conferred." Actions constituting "financial contributions" include:

(a) Direct transfers of funds (for example, grants, loans and equity infusions) and potential direct transfers of funds or liabilities (for example, government guarantees).

(b) Foregoing or non-collection of government revenue that is otherwise due (for example, fiscal incentives such as tax credits).

(c) Government provision of goods or services (other than infrastructure) or government purchases of goods.
(d) Government making payments to a funding mechanism or entrusting or directing a private body to carry out one or more of the type of functions above which would normally be vested in the government and which in practice does not differ from practices normally followed by governments.

**Categories of Subsidies:**
The Subsidies Agreement defines three categories of subsidies according to purpose and nature:

1) subsidies that are prohibited outright (hereinafter "red-light subsidies"),
2) subsidies that are not prohibited but which may be subject to countervailing measures (hereinafter "yellow-light subsidies"), and
3) subsidies that are neither prohibited nor subject to countervailing measures (hereinafter "green-light subsidies"). It also defines the relationship between countervailing measures and remedies for each type of subsidy.

(a) Red- light Subsidies:

Red-light subsidies mean prohibited subsidies. With certain exceptions, such a preferential treatment for developing countries and transitional economies, all red-light subsidies must be eliminated (Article 3). If a red-light subsidy is granted, it may be subject to the remedies for red-light subsidies (Article 4). Furthermore, the remedies for red-light subsidies may be invoked in parallel with countervailing measures; however, with regard tothe effects of a particular subsidy in the domestic market of the importing member, only one form of relief (either a countervailing duty or the defined remedies) shall be available. There are two categories of red subsidies: export subsidies and subsidies contingent upon the use of domestic over imported goods. The Subsidies Agreement illustrates the following measures as export subsidies.
- Measures which provide direct subsidies contingent upon export performance.
- Measures which involve a bonus on exports, such as currency retention schemes.
- Measures which treat internal transport and freight charges on export shipments on terms more favorable than for domestic shipments.
- Measures which provide products or services for use in the production of exported goods on terms or conditions more favorable than for domestic consumption.
- Measures which allow the full or partial exemption, remission or deferral specifically related to exports, of direct taxes or social welfare charges.
- Measures which allow the exemption or remission, in respect of exported products, of indirect taxes in excess of those levied in respect of like products when sold for domestic consumption.
- Measures which provided export credit guarantees or insurance programmes at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.
- With some exceptions, government export credits granted at rates below those which the government actually has to pay for the funds so employed, or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

(b)Yellow-light Subsidies:

Yellow-light subsidies are not prohibited per se but may be subject to the remedies for yellow subsidies if they cause adverse effects, such as serious injury ("serious prejudice") to other countries (Article 7). Furthermore, the remedies for yellow-light subsidies may be invoked in parallel with countervailing measures; however, with regard to the effects of a particular subsidy in the domestic market of the importing member, only one form of relief (either a countervailing duty or the defined remedies) shall be available.

(c)Green-light Subsidies:
Green-light subsidies are neither prohibited nor subject to countervailing measures. Green-light subsidies includes non-specific subsidies and those specific subsidies has meet certain conditions found below. Specific green-light subsidies include research and development subsidies, regional development subsidies, and environmental conservation subsidies that have been reported to the Committee before they take effect, reviewed by the WTO Secretariat, and approved by the Committee. Furthermore, specific green-light subsidies may be subject to the remedies for green-light subsidies (Article 9) if they cause damage which would be difficult to repair to the domestic industry of a member.

**- Research and Development Subsidies:**
Among research and development subsidies, those for industrial research must cover no more than 75 percent of expenses; those for pre-competitive development activities, no more than 50 percent. There are also limits on the uses to which funds can be put within this context, for example, to cover wage costs.

**- Regional Development Subsidies :**
This includes assistance to disadvantaged areas within a member's borders when it is provided under a general regional development scheme. However, the subsidy should not have specificity within the region, and the region involved must have an unemployment rate that is at least 10 percent higher than the national average or income that is at least 15 percent lower.

**- Environmental Conservation Subsidies:**
Environmental conservation subsidies to promote the upgrade of existing equipment to new environmental criteria set forth in legislation are permitted when such upgrades would impose heavy constraints or financial burdens on companies and the subsidy meets the following conditions: one-time only, covering no more than 20 percent of expenses; subsidy does not cover the cost of replacing or operating equipment; subsidy is directly linked to and proportionate to a firm's planned reduction of nuisances and pollution; subsidy does not cover any manufacturing cost savings which may be achieved; and subsidy is available to all firms which can adopt the new equipment and/or production processes.

**Countervailing Measures (Articles 10 to 23):**
Countervailing measures may be used for red-light and yellow-light subsidies when imports of subsidized goods harm a competing domestic industry. They are used to offset the effect of the subsidy by, for example, imposing a countervailing duty (limited to the amount of the subsidy) on the import of subsidized goods or securing quid pro quo commitments from the subsidizing country (that it will abolish or restrict the subsidy, or that exporters will raise prices).

Countervailing duties may only be applied after an investigation has been initiated and conducted according to procedures specified in the Agreement. Countervailing duties are also subject to a "sunset clause" and a "de minimis clause".

**C. Anti-dumping Agreement:**

Part I: Article 1: Principles:

An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations.

Part I: Article 2 : Determination of Dumping:

2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

2.2.1 Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities determine that such sales are made within an extended period of time in substantial quantities and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

2.2.1.1 For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in

accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.

2.2.2 For the purpose of paragraph 2, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

(i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category ofproducts;

(ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;

(iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

2.3 In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.

2.4.1 When the comparison under paragraph 4 requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

2.4.2 Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

2.5 In the case where products are not imported directly from the country of origin but are exported to the importing Member from an intermediate country, the price at which the products are sold from the country of export to the importing Member shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

2.6 Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

2.7 This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I to GATT 1994.

**Part I: Article 3: Determination of Injury:**

3.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both *(a)* the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and *(b)* the consequent impact of these imports on domestic producers of such products.

3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there

has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3.3 Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that *(a)* the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in paragraph 8 of Article 5 and the volume of imports from each country is not negligible and *(b)* a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

3.4 The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3.5 It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

3.6 The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

3.7 A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In

making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:

(i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;

(ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;

(iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(iv) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

3.8 With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.

**Part I: Article 4: Definition of Domestic Industry:**

4.1 For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:

(i) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;
(ii) in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if *(a)* the producers within such market sell all or almost all of their production of the product in question in that market, and *(b)* the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

4.2 When the domestic industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 1(ii), anti-dumping duties shall be levied only on the products in question consigned for final consumption to that area. When the constitutional law of the importing Member does not permit the levying of anti-dumping duties on such a basis, the importing Member may levy the anti-dumping duties without limitation only if *(a)* the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 8 and adequate assurances in this regard have not been promptly given, and *(b)* such duties cannot be levied only on products of specific producers which supply the area in question.

4.3 Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of GATT 1994 such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraph 1.

4.4 The provisions of paragraph 6 of Article 3 shall be applicable to this Article.

**Part I: Article 5: Initiation and Subsequent Investigation:**

5.1 Except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry.

5.2 An application under paragraph 1 shall include evidence of *(a)* dumping, *(b)* injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement and *(c)* a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:

(i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;
(ii) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;
(iii) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first

resold to an independent buyer in the territory of the importing Member; (iv) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in paragraphs 2 and 4 of Article 3.

5.3 The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned.

5.6 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation.

5.7 The evidence of both dumping and injury shall be considered simultaneously *(a)* in the decision whether or not to initiate an investigation, and *(b)* thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be

regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.

5.9 An anti-dumping proceeding shall not hinder the procedures of customs clearance.

5.10 Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

**Part I: Article 9: Imposition and Collection of Anti-Dumping Duties**

9.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

9.2 When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

9.3 The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2.

9.3.1 When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping duties shall take place as soon as possible, normally within 12 months, and in no case more than 18 months, after the date on which a request for a final assessment of the amount of the anti-dumping duty has been made. Any refund shall be made promptly and normally in not more than 90 days following the determination of final liability made pursuant to this sub-paragraph. In any case, where a refund is not made within 90 days, the authorities shall provide an explanation if so requested.
9.3.2 When the amount of the anti-dumping duty is assessed on a prospective basis, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the margin of dumping. A refund of any such duty paid in excess of the actual margin of dumping shall normally take place within 12 months, and in no case more than 18 months, after the date on

which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty. The refund authorized should normally be made within 90 days of the above-noted decision.

9.3.3 In determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with paragraph 3 of Article 2, authorities should take account of any change in normal value, any change in costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence of the above is provided.

9.4 When the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:

(i) the weighted average margin of dumping established with respect to the selected exporters or producers or,

(ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined, provided that the authorities shall disregard for the purpose of this paragraph any zero and *de minimis* margins and margins established under the circumstances referred to in paragraph 8 of Article 6. The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for in subparagraph 10.2 of Article 6.

9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

**Part I: Article 10: Retroactivity:**

10.1 Provisional measures and anti-dumping duties shall only be applied to products which enter for consumption after the time when the decision taken under paragraph 1 of Article 7 and

paragraph 1 of Article 9, respectively, enters into force, subject to the exceptions set out in this Article.

10.2 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

10.3 If the definitive anti-dumping duty is higher than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

10.4 Except as provided in paragraph 2, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.5 Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.6 A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the authorities determine for the dumped product in question that:

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury, and

(ii) the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

10.7 The authorities may, after initiating an investigation, take such measures as the withholding of appraisement or assessment as may be necessary to collect anti-dumping duties retroactively, as provided for in paragraph 6, once they have sufficient evidence that the conditions set forth in that paragraph are satisfied.

10.8 No duties shall be levied retroactively pursuant to paragraph 6 on products entered for consumption prior to the date of initiation of the investigation.

**Part I: Article 13 : Judicial Review:**

Each Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question.

**Part I: Article 14: Anti-Dumping Action on Behalf of a Third Country:**

14.1 An application for anti-dumping action on behalf of a third country shall be made by the authorities of the third country requesting action.

14.2 Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.

14.3 In considering such an application, the authorities of the importing country shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say, the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the importing country or even on the industry's total exports.

14.4 The decision whether or not to proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take action, the initiation of the approach to the Council for Trade in Goods seeking its approval for such action shall rest with the importing country.

**Part II: Article 17: Consultation and Dispute Settlement:**

17.1 Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement.

17.2 Each Member shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by another Member with respect to any matter affecting the operation of this Agreement.

17.3 If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective is being impeded, by another Member or Members, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultation.

17.4 If the Member that requested consultations considers that the consultations pursuant to paragraph 3 have failed to achieve a mutually agreed solution, and if final action has been taken by the administering authorities of the importing Member to levy definitive anti-dumping duties or to accept price undertakings, it may refer the matter to the Dispute Settlement Body ("DSB"). When a provisional measure has a significant impact and the Member that requested consultations considers that the measure was taken contrary to the provisions of paragraph 1 of Article 7, that Member may also refer such matter to the DSB.

17.5 The DSB shall, at the request of the complaining party, establish a panel to examine the matter based upon:

(i) a written statement of the Member making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and
(ii) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member.

17.6 In examining the matter referred to in paragraph 5:

(i) in its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned;
(ii) the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of interpretation of public international law. Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.

17.7 Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person, body or authority providing the information, shall be provided.

**D. Agreement on Safeguards:**

Article 1: General Provision:

This Agreement establishes rules for the application of safeguard measures which shall be understood to mean those measures provided for in Article XIX of GATT 1994.

Article 2: Conditions:

1. A Member may apply a safeguard measure to a product only if that Member has determined, pursuant to the provisions set out below, that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

2. Safeguard measures shall be applied to a product being imported irrespective of its source.

Article 3: Investigation:

1. A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

2. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided. However, if the competent authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

Article 4: Determination of Serious Injury or Threat Thereof:

1. For the purposes of this Agreement:

(a) "serious injury" shall be understood to mean a significant overall impairment in the position of a domestic industry;

(b) "threat of serious injury" shall be understood to mean serious injury that is clearly imminent, in accordance with the provisions of paragraph 2. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility; and

(c) in determining injury or threat thereof, a "domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

2. (a) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this Agreement, the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

(b) The determination referred to in subparagraph (a) shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.
(c) The competent authorities shall publish promptly, in accordance with the provisions of Article 3, a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined.

Article 5: Application of Safeguard Measures:

1. A Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. Members should choose measures most suitable for the achievement of these objectives.

2. (a) In cases in which a quota is allocated among supplying countries, the Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Members having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the Member concerned shall allot to Members having a substantial interest in supplying the product shares based upon the proportions, supplied by such Members during a previous representative period, of the total quantity or value of

imports of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product.

(b) A Member may depart from the provisions in subparagraph (a) provided that consultations under paragraph 3 of Article 12 are conducted under the auspices of the Committee on Safeguards provided for in paragraph 1 of Article 13 and that clear demonstration is provided to the Committee that (*i*) imports from certain Members have increased in disproportionate percentage in relation to the total increase of imports of the product concerned in the representative period, (*ii*) the reasons for the departure from the provisions in subparagraph (a) are justified, and (*iii*) the conditions of such departure are equitable to all suppliers of the product concerned. The duration of any such measure shall not be extended beyond the initial period under paragraph 1 of Article 7. The departure referred to above shall not be permitted in the case of threat of serious injury.

Article 6: Provisional Safeguard Measures:

In critical circumstances where delay would cause damage which it would be difficult to repair, a Member may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during which period the pertinent requirements of Articles 2 through 7 and 12 shall be met. Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in paragraph 2 of Article 4 does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraphs 1, 2 and 3 of Article 7.

Article 7: Duration and Review of Safeguard Measures:

1. A Member shall apply safeguard measures only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. The period shall not exceed four years, unless it is extended under paragraph 2.

2. The period mentioned in paragraph 1 may be extended provided that the competent authorities of the importing Member have determined, in conformity with the procedures set out in Articles 2, 3, 4 and 5, that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting, and provided that the pertinent provisions of Articles 8 and 12 are observed.

3. The total period of application of a safeguard measure including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed eight years.

4. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure as notified under the provisions of paragraph 1 of Article 12 is over one year, the Member applying the measure shall progressively liberalize it at regular intervals during the period of application. If the duration of the measure exceeds three years, the Member applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization. A measure extended under paragraph 2 shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

5. No safeguard measure shall be applied again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

6. Notwithstanding the provisions of paragraph 5, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if:

(a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and

(b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

Article 14: Dispute Settlement:

The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes arising under this Agreement.

# Unit – III: Trade in Services:

A. General Agreement on Trade in Services:

GENERAL AGREEMENT ON TRADE IN SERVICES

Introduction:

Members, Recognizing the growing importance of trade in services for the growth and development of the world economy; Wishing to establish a multilateral framework of principles and rules for trade in services with a view to the expansion of such trade under conditions of

transparency and progressive liberalization and as a means of promoting the economic growth of all trading partners and the development of developing countries; Desiring the early achievement of progressively higher levels of liberalization of trade in services through successive rounds of multilateral negotiations aimed at promoting the interests of all participants on a mutually advantageous basis and at securing an overall balance of rights and obligations, while giving due respect to national policy objectives; Recognizing the right of Members to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet national policy objectives and, given asymmetries existing with respect to the degree of development of services regulations in different countries, the particular need of developing countries to exercise this right; Desiring to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, inter alia , through the strengthening of their domestic services capacity and its efficiency and competitiveness; Taking particular account of the serious difficulty of the least-developed countries in view of their special economic situation and their development, trade and financial needs; Hereby agreeas follows:

PART I: SCOPE AND DEFINITION:

Article I: Scope and Definition

1.This Agreement applies to measures by Members affecting trade in services.

2. For the purposes of this Agreement, trade in services is defined as the supply of a service:

(a) from the territory of one Member into the territory of any other Member;

(b) in the territory of one Member to the service consumer of any other Member;

(c) by a service supplier of one Member, through commercial presence in the territory of any other Member;

(d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.

3. For the purposes of this Agreement:

(a) "measures by Members" means measures taken by:

(i) central, regional or local governments and authorities; and

(ii) non-governmental bodies in the exercise of powers delegated by central, regional or local governments or authorities;

In fulfilling its obligations and commitments under the Agreement, each Member shall take such reasonable measures as may be available to it to ensure their observance by regional and local governments and authorities and non-governmental bodies within its territory;

(b)"services" includes any service in any sector except services supplied in the exercise of governmental authority;

(c) "a service supplied in the exercise of governmental authority" means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers.

PART II

GENERAL OBLIGATIONS AND DISCIPLINES

Article II

Most-Favoured-Nation Treatment:

1.With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country.

2. A Member may maintain a measure inconsistent with paragraph provided that such a measure is listed in, and meets the conditions of, the Annex on Article II Exemptions.

3.The provisions of this Agreement shall not be so construed as to prevent any Member from conferring or according advantages to adjacent countries in order to facilitate exchanges limited to contiguous frontier zones of services that are both locally produced and consumed.

Article III: Transparency:

1. Each Member shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Member is a signatory shall also be published.
2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.
3. Each Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.

4. Each Member shall respond promptly to all requests by any other Member for specific information on any of its measures of general application or international agreements within the meaning of paragraph 1.

   Each Member shall also establish one or more enquiry points to provide specific information to other Members, upon request, on all such matters as well as those subject to the notification requirement in paragraph 3. Such enquiry points shall be established within two years from the date of entry into force of the Agreement Establishing the WTO (referred to in this Agreement as the "WTO Agreement"). Appropriate flexibility with respect to the time-limit within which such enquiry points are to be established may be agreed upon for individual developing country Members. Enquiry points need not be depositories of laws and regulations.

5. Any Member may notify to the Council for Trade in Services any measure, taken by any other Member, which it considers affects the operation of this Agreement.

Disclosure of Confidential Information:

Nothing in this Agreement shall require any Member to provide confidential information, the disclosure of which would impede law enforcement, or otherwise be contrary to the public interest, or which would prejudice legitimate commercial interests of particular enterprises, public or private.

Article IV: Increasing Participation of Developing Countries:

1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, 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.

2. Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets, concerning:

(a) commercial and technical aspects of the supply of services;

**B. Ongoing Multilateral Negotiations:**

The General Agreement on Trade in Services (GATS) mandates WTO member governments to progressively liberalize trade in services through successive rounds of negotiations. Under the mandate of Article XIX, the latest round of negotiations began in January 2000. In March 2001 the Guidelines and Procedures for the Negotiations on Trade in Services were adopted by the Council for Trade in Services. At the Doha Ministerial Conference in November 2001 the services negotiations became part of the "single undertaking" under the Doha Development Agenda, whereby all subjects under the negotiations are to be concluded at the same time

Negotiations process:

Negotiations in the Doha Round are being conducted essentially on two tracks:

- bilateral and/or plurilateral negotiations to improve market conditions for trade in services — this mostly involves improving specific commitments on market access and national treatment (i.e. ensuring that privileges given to local companies are also given to foreign companies) and promoting most-favoured nation treatment (more equal treatment among WTO members)
- multilateral negotiations among all WTO members to establish any necessary rules and disciplines (such as on domestic regulation, emergency safeguard measures, government procurement and subsidies) which will apply to the whole WTO membership, with certain special provisions for developing and least-developed countries.

Proposals for the negotiations:

At the start of the negotiations, WTO members tabled proposals regarding both the structure and the contents of the negotiations. These proposals highlight the main areas of interest for individual members and/or groups of members. Often the proposals provide background information and suggestions for improving trade conditions in a particular sector. Currently, there are virtually no new proposals being tabled as work has moved on to the request-offer process.

Special Sessions:

The Council for Trade in Services (meeting in "special session") is the body responsible for overseeing the negotiations. All subsidiary bodies, such as the Working Party on Domestic Regulation and the Working Party on GATS Rules, report to the Council. The current chair is Ambassador Gabriel DUQUE (Colombia).

# Unit – IV: International Trade Dispute Resolution:

## A. Nullification or impairment:

Types of complaints and required allegations in GATT 1994:

The GATT 1994 contains "consultation and dispute settlement provisions" in both Articles XXII and XXIII. However, it is Article XXIII:1(a) to (c) which sets out the specific circumstances in which a (WTO) Member is entitled to a remedy. Article XXIII:2 originally specified the form that this remedy could take, but the consequences of a successful recourse to the dispute settlement system nowadays are set out in more detail in the DSU. Article XXIII of GATT 1994 therefore retains its significance chiefly for specifying in paragraph 1 the conditions under which a Member can invoke the dispute settlement system. Article XXIII:1 of GATT 1994 states:

"Nullification or Impairment:"

1. If any contracting party should consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded as the result of:

a. the failure of another contracting party to carry out its obligations under this Agreement, or

b. the application by another contracting party of any measure, whether or not it conflicts with the provisions of this Agreement, or
c. the existence of any other situation, the contracting party may, with a view to the satisfactory adjustment of the matter, make written representations or proposals to the other contracting party or parties which it considers to be concerned. Any contracting party thus approached shall give sympathetic consideration to the representations or proposals made to it."

The different types of complaints under Article XXIII:1 of GATT 1994:

In subparagraphs (a), (b) and (c), Article XXIII:1 provides for three alternative options (i.e. (a) "or" (b) "or" (c)) on which a complainant may rely. However, Article XXIII:1 starts with an introductory clause containing the condition that a Member "consider that any benefit accruing to it directly or indirectly under this Agreement is being nullified or impaired or that the attainment of any objective of the Agreement is being impeded". This must be the result of one of the scenarios specified in subparagraphs (a), (b) and (c).

The first, and by far, the most common comp aint is the so-called "violation complaint" pursuant to Article XXIII:1(a) of GATT 1994. This complaint requires "nullification or impairment of a benefit" as a result of the "the failure of another [Member] to carry out its obligations" under

GATT 1994. This "failure to carry out obligations" is just a different way of referring to a legal inconsistency with, or violation of, the GATT 1994. There also needs to be "nullification or impairment" as a result of the alleged legal inconsistency.

The second type of complaint is the so-called "non-violation complaint" pursuant to Article XXIII:1(b) of GATT 1994. A non-violation complaint may be used to challenge any measure applied by another Member, even if it does not conflict with GATT 1994, provided that it results in "nullification or impairment of a benefit". There have been a few such complaints both under GATT 1947 and in the WTO.

The third type of complaint is the so-called "situation complaint" pursuant to Article XXIII:1(c) of GATT 1994. Literally understood, it could cover any situation whatsoever, as long as it results in "nullification or impairment". However, although a few such situation complaints have been raised under the old GATT, none of them has ever resulted in a panel report. In the WTO, Article XXIII:1(c) of GATT 1994 has not so far been invoked by any complainant.

Given the admissibility of "non-violation" and "situation complaints", the scope of the WTO dispute settlement system is broader than that of other international dispute settlement systems which are confined to adjudicating only violations of agreements. Simultaneously, the WTO dispute settlement system is narrower than those other systems, in the sense that a violation must also result in nullification or impairment (or possibly the impeded attainment of an objective). This particularity of the system for settlement of international trade disputes reflects the intention to maintain the negotiated balance of concessions and benefits between the WTO Members. It was GATT practice and it is now WTO law that a violation of a WTO provision triggers a rebuttal presumption of nullification or impairment of trade benefits (Article 3.8 of the DSU).

In summary, the WTO dispute settlement system provides for three kinds of complaints: (a) "violation complaints", (b) "non-violation complaints" and (c) "situation complaints". Violation complaints are by far the most frequent. Only a few cases have been brought on the basis of an allegation of non-violation nullification or impairment of trade benefits. No "situation complaint" has ever resulted in a panel or Appellate Body report based on Article XXIII:1(c) of GATT 1994.

Violation complaint:

As outlined above, a violation complaint will succeed when the respondent fails to carry out its obligations under GATT 1994 or the other covered agreements, and this results directly or indirectly in nullification or impairment of a benefit accruing to the complainant under these agreements. If it can be established before a Panel and the Appellate Body that these two conditions are satisfied, the complainant will "win" the dispute.

In practice, the first of these two conditions, the violation, plays a much more important role than the second condition, nullification or impairment of a benefit. This is due to the fact that

nullification or impairment is "presumed" to exist whenever a violation has been established. This presumption evolved in GATT jurisprudence and is today codified in Article 3.8 of the DSU. Article 3.8 is concerned only with violation complaints ("where there is an infringement"). The presumption set out in this article relates to nullification or impairment once it has been established that there is a breach of an obligation. The presumption does not address the question whether there is such a violation, and it should not be confused with this question.

The effect of the legal presumption is that of a reversal of the burden of proof. The concept of a legal presumption and the language in the last sentence of Article 3.8 of the DSU imply that the presumption set out by Article 3.8 of the DSU can be rebutted. However, there has been no single case of a successful rebuttal in the history of GATT and the WTO to date. GATT panels rejected all attempts to demonstrate that there was no actual trade impact. For instance, the fact that an import quota had not been fully utilized was insufficient for proving the absence of nullification or impairment of benefits because quotas give rise to increased transaction costs and uncertainties that could affect investment plans. In another case, a panel rejected the claim that the GATT-inconsistent measure caused no or insignificant trade effects arguing that the national treatment requirement in GATT 1947 did not protect expectations on export volumes, but expectations on the competitive relationship between imported and domestic products. The Appellate Body has endorsed this reasoning. One GATT panel went as far as to observe that the presumption had, in practice, operated as an irrefutable presumption.

In the practice of the WTO dispute settlement system, panels typically cite Article 3.8 of the DSU (other than disputes brought under the GATS) once they have concluded that the defendant has violated a rule of a covered agreement. Unless the defendant (exceptionally) makes an attempt to rebut the presumption, panels dedicate no more than a brief paragraph at the end of their reports to the issue of nullification or impairment. It should be noted that the types of complaints brought under the GATS are slightly different.

**B. Dispute settlement:**

UNDERSTANDING THE WTO: SETTLING DISPUTES:

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

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

Principles: equitable, fast, effective, mutually acceptable

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

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

A procedure for settling disputes existed under the old GATT, but it had no fixed timetables, rulings were easier to block, and many cases dragged on for a long time inconclusively. The Uruguay Round agreement introduced a more structured process with more clearly defined stages in the procedure. It introduced greater discipline for the length of time a case should take to be settled, with flexible deadlines set in various stages of the procedure. The agreement emphasizes that prompt settlement is essential if the WTO is to function effectively. It sets out in considerable detail the procedures and the timetable to be followed in resolving disputes. If a case runs its full course to a first ruling, it should not normally take more than about one year — 15 months if the case is appealed. The agreed time limits are flexible, and if the case is considered urgent (e.g. if perishable goods are involved), it is accelerated as much as possible.

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

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

How are disputes settled?

Settling disputes is the responsibility of the Dispute Settlement Body (the General Council in another guise), which consists of all WTO members. The Dispute Settlement Body has the sole authority to establish “panels” of experts to consider the case, and to accept or reject the

panels' findings or the results of an appeal. It monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling.

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

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

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

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

- **Before the first hearing:** each side in the dispute presents its case in writing to the panel.
- **First hearing: the case for the complaining country and defence:** the complaining country (or countries), the responding country, and those that have announced they have an interest in the dispute, make their case at the panel's first hearing.
- **Rebuttals:** the countries involved submit written rebuttals and present oral arguments at the panel's second meeting.
- **Experts:** if one side raises scientific or other technical matters, the panel may consult experts or appoint an expert review group to prepare an advisory report.
- **First draft:** the panel submits the descriptive (factual and argument) sections of its report to the two sides, giving them two weeks to comment. This report does not include findings and conclusions.
- **Interim report:** The panel then submits an interim report, including its findings and conclusions, to the two sides, giving them one week to ask for a review.
- **Review:** The period of review must not exceed two weeks. During that time, the panel may hold additional meetings with the two sides.
- **Final report:** A final report is submitted to the two sides and three weeks later, it is circulated to all WTO members. If the panel decides that the disputed trade measure

does break a WTO agreement or an obligation, it recommends that the measure be made to conform with WTO rules. The panel may suggest how this could be done.

- **The report becomes a ruling:** The report becomes the Dispute Settlement Body's ruling or recommendation within 60 days unless a consensus rejects it. Both sides can appeal the report (and in some cases both sides do).

Appeals:

Either side can appeal a panel's ruling. Sometimes both sides do so. Appeals have to be based on points of law such as legal interpretation — they cannot reexamine existing evidence or examine new issues. Each appeal is heard by three members of a permanent seven-member Appellate Body set up by the Dispute Settlement Body and broadly representing the range of WTO membership. Members of the Appellate Body have four-year terms. They have to be individuals with recognized standing in the field of law and international trade, not affiliated with any government. The appeal can uphold, modify or reverse the panel's legal findings and conclusions. Normally appeals should not last more than 60 days, with an absolute maximum of 90 days. The Dispute Settlement Body has to accept or reject the appeals report within 30 days — and rejection is only possible by consensus.

## C. Enforcement and Remedies:

### Introduction to WTO Dispute Resolution:

The WTO's Dispute Settlement Understanding (DSU) evolved out of the ineffective means used under the GATT for settling disagreements among members. Under the GATT, procedures for settling disputes were ineffective and time consuming since a single nation, including the nation, whose actions were the subject of complaint, could effectively block or delay every stage of the dispute resolution process. It remains to be seen whether countries will comply with the new WTO dispute settlement mechanism, but thus far the process has met with relative success.

The DSU was designed to deal with the complexity of reducing and eliminating non-tariff barriers to trade. A non-tariff trade barrier can be almost any government policy or regulation that has the effect of making it more difficult or costly for foreign competitors to do business in a country. In the early years of the GATT, most of the progress in reducing trade barriers focused on trade in goods and in reducing or eliminating the tariff levels on those goods. More recently, tariffs have been all but eliminated in a wide variety of sectors. This has meant that non-tariff trade barriers have become more important since, in the absence of tariffs, only such barriers significantly distort the overall pattern of trade-liberalization. Frequently, such non-tariff trade barriers are the inadvertent

consequence of well meaning attempts to regulate to ensure safety or protection for the environment, or other public policy goals. In other cases, countries have been suspected of deliberately creating such regulations under the guise of regulatory intent, but which have the effect of protecting domestic industries from open international competition, to the detriment of the international free-trade regime.

The WTO's strengthened dispute resolution mechanism was designed to have the authority to sort out this "fine line between national prerogatives and unacceptable trade restrictions" Several of the supplemental agreements to the GATT created during the Uruguay Round, such as the SPS Agreement, sought to specify the conditions under which national regulations were permissible even if they had the effect of restraining trade. The United States, perhaps more than any other country, has found itself on both sides of this delicate balance. In 1988, it was the United States who pushed for strengthening the Dispute Settlement provisions of the GATT during the Uruguay Round, in part because Congress was not convinced that, "the GATT, as it stood, could offer the United States an equitable balance of advantage." The concern was that formal concessions granted to U.S. exports going into other countries would be eroded by hidden barriers to trade. On the other hand, the United States harbors reservations in regards to its sovereignty, with much of the negative reaction to the WTO itself centered around the concern that U.S. laws and regulations may be reversed by the DSU panels or the Appellate Body.

Critics argued that the WTO would "compel Congress and our states to abandon many health and environmental standards" if they were at odds with international trade rules. Particularly, these critics noted that the United States would not have a veto in the WTO and that each nation would have an equal say in the DSB, which ultimately votes to adopt or reject panel reports. They further noted that the Appellate Body and the dispute settlement panels vote in secret, and that they could authorize nations to retaliate against violations of the trade agreements with unilateral sanctions. It was argued by some that the cumulative effect of WTO dispute panel decisions would be to erode the sovereignty of the United States. One of the purposes of this review is to assess the validity of this claim in light of the actual functioning of the WTO system over the last three years.

## OVERVIEW OF THE DISPUTE SETTLEMENT UNDERSTANDING

The Dispute Settlement Understanding (DSU), formally known as the Understanding on Rules and Procedures Governing the Settlement of Disputes, establishes rules and procedures that manage various disputes arising under the Covered Agreements of the Final Act of the Uruguay Round. All WTO member nation-states are subject to it and are the only legal entities that may bring and file cases to the WTO. The DSU created the Dispute Settlement Body (DSB), consisting of all WTO members, which administers dispute settlement procedures. It provides strict time frames for the dispute settlement process and establishes an appeals system to standardize the interpretation of specific clauses of the agreements. It also provides for the automatic establishment of a panel and

automatic adoption of a panel report to prevent nations from stopping action by simply ignoring complaints. Strengthened rules and procedures with strict time limits for the dispute settlement process aim at providing "security and predictability to the multilateral trading system" and achieving "[a] solution mutually acceptable to the parties to a dispute and consistent with the covered agreements." The basic stages of dispute resolution covered in the understanding include consultation, good offices, conciliation and mediation, a panel phase, Appellate Body review, and remedies.

**Consultation**

A member-country may request consultations when it considers another member- country to have "infringed upon the obligations assumed under a Covered Agreement." If the respondent fails to respond within ten days or enter into consultations within thirty days, the complaint "may proceed directly to request the establishment of a panel."

**Good Offices, Conciliation and Mediation**

Unlike consultation in which "a complainant has the power to force a respondent to reply and consult or face a panel," good offices, conciliation and mediation "are undertaken voluntarily if the parties to the dispute so agree." No requirements on form, time, or procedure for them exist. Any party may initiate or terminate them at any time. The complaining party may request the formation of panel, "if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute." Thus the DSU recognized that what was important was that the nations involved in a dispute come to a workable understanding on how to proceed, and that sometimes the formal WTO dispute resolution process would not be the best way to find such an accord. Still, no nation could simply ignore its obligations under international trade agreements without taking the risk that a WTO panel would take note of its behavior.

**Panel Phase**

If consultation, good offices, conciliation or mediation fails to settle the dispute, the complaining party may request the formation of panel. The DSB shall form a panel, "unless at that meeting the DSB decides by consensus not to establish a panel." "Panels shall be composed of well-qualified governmental and/or non-governmental individuals" "with a view to ensuring the independence of the members," and whose governments are not the parties to the dispute, "unless the parties to the dispute agree otherwise."( Three panelists compose a panel unless the parties agree to have five panelists.

The Secretariat proposes nominations for panels that the parties shall not oppose "except for compelling reasons." If the parties disagree on the panelists, upon the reqest of either party, "the director-general in consultation with the chairman of the DSB and the chairman of the relevant council or committees" shall appoint the panelists.

When multiple parties request the establishment of a panel with regard to the same matter, the DSU suggests a strong preference for a single panel to be established "to examine these complaints taking into account the rights of all members concerned." The DSU gives any member that has "a substantial interest in a matter before a panel" (and notifies "its interest to the DSB") an opportunity "to be heard by the panel and to make written submissions to the panel."

"The panel shall submit its findings in the form of written report to the DSB." As a general rule, it shall not exceed six months from the formation of the panel to submission of the report to the DSB. In interim review stage, the panel submits an interim report to the parties. The panel "shall hold a further meeting with the parties" if the parties present written comments. If no comments are provided by the parties within the comment period, the "report shall be the final report and circulated promptly to the members." Within sixty days after the report is circulated to the members, "the report shall be adopted at a DSB meeting unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adapt the report."

**Appellate Body Review**

The DSB establishes a standing Appellate Body that will hear the appeals from panel cases. The Appellate Body "shall be composed of seven persons, three of whom shall serve on any one case." Those persons serving on the Appellate Body are to be "persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the Covered Agreements generally." The Body shall consider only "issues of law covered in the panel report and legal interpretations developed by the panel." Its proceedings shall be confidential, and its reports anonymous. This provision is important because, unlike judges in the United States, the members of the appellate panel do not serve for life. This means that if their decisions were public, they would be subject to personal retaliation by governments unhappy with decisions, thus corrupting the fairness of the process. Decisions made by the Appellate Body "may uphold, modify, or reverse the legal findings and conclusions of the panel." The DSB and the parties shall accept the report by the Appellate Body without amendments "unless the DSB decides by consensus not to adopt the Appellate Body report within thirty days following its circulation to the members."

**Remedies**

There are consequences for the member whose measure or trade practice is found to violate the Covered Agreements by a panel or Appellate Body. The dispute panel issues recommendations with suggestions of how a nation is to come into compliance with the trade agreements. If the member fails to do so within the determined "reasonable period of time," the complainant may request negotiations for compensation. Within twenty days after the expiration of the reasonable period of time, if satisfactory compensation is not agreed, the complaining party "may request authorization from the DSB to suspend the

application to the member concerned of concessions or other obligations under the Covered Agreements."

Retaliation shall be first limited to the same sector(s). If the complaining party considers the retaliation insufficient, it may seek retaliation across sectors.The DSB "shall grant authorization to suspend concessions or other obligations within thirty days of the expiry of the reasonable time unless the DSB decides by consensus to reject the request." The defendent may object to the level of suspension proposed. "The original panel, if members are available, or an arbitrator appointed by the director-general" may conduct arbitration.

**Arbitration**

Members may seek arbitration within the WTO as an alternative means of dispute settlement "to facilitate the solution of certain disputes that concern issues that are clearly defined by both parties." Those parties must reach mutual agreement to arbitration and the procedures to be followed. Agreed arbitration must be notified to all members prior to the beginning of the arbitration process. Third parties may become party to the arbitration "only upon the agreement of the parties that have agreed to have recourse to arbitration." The parties to the proceeding must agree to abide by the arbitration award. "Arbitration awards shall be notified to the DSB and the Council or Committee of any relevant agreement where any member may raise any point relating thereto."

**THE WTO'S DISPUTE SETTLEMENT SYSTEM IN OPERATION**

Now that the WTO Dispute Settlement procedures have been in use for three years, it is possible to make a tentative analysis of the impact of this institutional evolution of the international trading system. A rich variety of cases have been addressed by the WTO dispute settlement procedures. (See Figure 1) These include complaints against countries with economies as small as Guatemala, and as large as the European Union. They have also targeted countries at vastly different stages of development, including countries like India at one end of the spectrum and the United States and Japan on the other.

**WTO DISPUTE PANELS AND THE BALANCE BETWEEN TRADE**

**Agreements and National Policy**

Since the various agreements that constitute the WTO cover such a wide range of topics, dispute settlement panelists find that a number of subjects come under their authority. This places WTO dispute panels in a delicate position. On the one hand they must identify cases where nations are failing to comply with international trade agreements; on the other, they must be cautious when making recommendations that reverse the preferences of national governments.

Thus far, in the decisions of the panels and the Appellate Body, there has been a tendency to write decisions in a way that minimizes the burden on nations to change their regulations and laws in order to comply with their WTO trade obligations. This does not mean that dispute settlement panels have not found nations in violation of the trade agreements. When they have, however, they have left national governments with a variety of options in order to come into compliance.

Two cases in which panel reports were adopted reflect the WTO's tendency to avoid becoming overly involved in the internal regulatory affairs of nations. These cases have been selected as examples because they have received a lot of attention, but the trend described can be found in each case where a panel report has been issued. Both examples are complaints by the United States, one against the European Union (EU) regarding restrictions on import of hormone treated meat, and the other against Japan regarding the photographic film industry. In the first case the United States won the concessions it sought; in the second case the panel found no evidence of violation of the trade agreements.

**European Hormone Case**

In the European Hormone Case the panel found the scientific evidence for the import restrictions on beef treated with growth hormones to be insufficient to justify the restriction on trade, but, in effect, left open a wide variety of ways for the EU to comply. The EU is conducting further studies in the hopes of justifying the ban. This was a case where the WTO panel clearly confronted the democratic will of the people, as expressed through their national legislatures and the European Parliament, since the hormone restrictions were initially adopted under intense public pressure. The panel sided with the United States by finding that the provisions were arbitrary and had the effect of restricting trade, but left options for the EU as well by suggesting that more complete scientific evidence would justify the ban. Alternatively, the panel indicated that technical changes in the way the policy is implemented could reduce the policy's negative impact on trade. Still, the panel was firm in ruling that the current policy is inconsistent with the SPS Agreement, and the EU will have to make substantive changes to come into compliance. If it does not, the EU will be required to offer other trading concessions to compensate for losses, some $200 million per year according to the United States. The EU has until 1999 to comply.

**Kodak-Fuji Case**

The Kodak-Fuji film dispute centers on the distribution system in Japan. In May 1995, Eastman Kodak, Co. asked the U.S. Trade Representative (USTR) to investigate the Japanese photographic film and paper market. Kodak charged that Fuji Photo Film, Co., Japan's biggest photographic film and paper producer, was involved in "anti-competitive trade practices" in Japan. Kodak asserted that Fuji, with the support of the Japanese government, tacitly dominated the consumer film market in Japan using unfair practices. According to Kodak, Japanese regulations implicitly favored Fuji by making it difficult for imported consumer photographic film and paper to be marketed in Japanese shops. Kodak

also said that some shops in Japan were not allowed to carry Kodak's products because of back room deals with Fuji. According to Kodak, this explained why Fuji had a 75 percent market share in Japan while Kodak had only a 7 percent share in 1996. Kodak estimated its losses since the 1970s due to the unfair practices at $5.6 billion. Accordingly, Kodak requested that Japanese regulations be changed in order to break up Fuji's exclusive distribution system.

In the Kodak-Fuji case, the panel ruled that Japanese regulations predated the reductions in tariffs that had been negotiated on photographic film. Consequently, those regulations could not have negated the benefits accruing to the United States in the trade agreement. This technical ruling allowed the WTO to avoid a far-reaching decision that could have found Japanese vertical integration of business in conflict with the intent of the WTO regime. Currently, there is no international standard for anti-trust regulation. If the WTO dispute settlement panel had found in favor of the United States, it would have been involved in creating new international obligations, an act not sanctioned by the WTO Agreement. The ruling suggests that the United States and other nations need not be overly concerned that the WTO's dispute settlement mechanism will overtly threaten national sovereignty.

In June of 1995, the United States began to investigate Japanese market barriers for photographic films and papers, and found that three "liberalization countermeasures" discriminated against imported goods. The first measure was exclusive wholesaling arrangements currently dominated by Fuji; the second was the large-stores law enacted in 1974. According to the United States, this law discouraged large stores from carrying film other than Fuji's. The third discriminatory measure cited involved controls on price competition and promotion as supervised by the Japanese Fair Trade Commission. After eleven months of investigation, the United States filed a complaint in the WTO on June 13, 1996, requesting consultations with Japan. The United States argued that the import-resistant market structure created by the Japanese government violated the national treatment principle of the GATT Article III. The United States also asserted that Japan's restrictions on retail operations and promotional activities ran counter to the transparency standard set out in the GATT Article X, even if Japan appears to offer neutral treatment of imported goods. The United States also made a "non-violation" claim that these measures nullify or impair benefits accruing to the United States. A "non-violation" claim is specifically authorized in the GATT Agreements if the actions of another nation reduce the value of negotiated trade concessions, even if the specific measure taken by the other country does not directly violate any of the Articles of the trade agreements. The types of redress available under such complaints, however, are limited.

Fuji denied Kodak's assertion. Fuji asserted that it had never conspired with the Japanese government to discriminate against imported goods. Furthermore, Fuji claimed that Kodak's loss of market share in Japan could be attributed to Kodak for a number of reasons. First, Kodak failed to introduce innovative products to compete with Fuji's new products. Second, Kodak's marketing strategy was not superior to that of Fuji's. Third, there

was no bottleneck to block Kodak from the market since it had the same access to consumers as Fuji. These market channels included selling directly to retailers, selling to secondary dealers, and selling to smaller retailers through photo finishing labs. Fourth, Fuji stated that its market share in the United States is only 11 percent while Kodak dominates the market with a 75 percent share. Thus, the proportion is exactly the reverse of the situation in Japan suggesting that both Kodak and Fuji have difficulty penetrating the domestic market of its rival. Therefore, consumers' loyalty to the domestic brand, and not formal restrictions on trade, can explain low market penetration by foreign competition. There is also a claim that, although Kodak is cheaper in Japan, customers buy Fuji because of its investment in innovative products and its creative marketing skills and services.

The United States, failing to reach an agreement with Japan, requested a dispute settlement panel on September 20, 1996. The panel was tasked to investigate Kodak's allegations that Japanese regulations had the effect of supporting anti-competitive practices by Fuji film. After more than a year's investigation, the WTO interim report was submitted on December 5, 1997. The report rejected the U.S. complaint against Fuji. The tribunal arbitration panelists were from Brazil, Switzerland, and New Zealand. They determined that the United States had not demonstrated that its WTO rights had been impaired.

Even though the panel did not rule as Kodak would have liked, there is evidence that Fuji's market share in Japan has diminished from 74 percent in the early 1990s to 67 percent at the end of 1997, though Fuji denies this.The profit margin of the color film industry in Japan used to be close to 12 percent, compared to 6 percent on overseas sales, but this has also fallen. Current retail prices for photographic film and paper in Japan reflect this, with prices about 30 to 40 percent below comparable prices in the United States. Kodak's market share in Japan now accounts for about 11 percent since it won the Nagano Olympic Games sponsorship by paying $44 million in 1996. In the Nagano area where the Games were held, Kodak has doubled its market share to 20 percent. In the U.S. market, however, Kodak's profits decreased by 25 percent in 1997 from the year before. Fuji's business in the U.S. market is also improving. Fuji increased its market share to 14 percent while Kodak had 76 percent of the market. Kodak announced plans to cut costs by a billion dollars and lay off 10,000 jobs over next two years in order to remain competitive.

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