Overview

This overview introduces the legal system of the Uruguay Round and briefly describes the progress achieved in trade liberalization. It is divided into three sections.

To enable readers to appreciate the results achieved by the Round in their correct perspective, section I gives an account of the background leading to the launching of the negotiations. This is followed in section II by a résumé of the main principles and rules embodied in the legal instruments that were either revised or newly negotiated in the Round. This section also gives a short description of the trade liberalization commitments undertaken by various countries. Section III explains the implications for business of these results. It stresses that governments negotiated the legal instruments and improvements in access to foreign markets primarily for the benefit of their industries, business enterprises and the trading community. The basic responsibility for taking advantage of the new trade opportunities that have been created as a result now falls on the business and trading communities. To assist them in converting these opportunities into business orders and in their overall efforts to develop trade, the legal system provides them with security of access and creates certain rights in their favour. Their ability, however, to derive full advantage from the system will greatly depend on their knowledge and understanding of its rules.

1. General

The Uruguay Round was the eighth of the rounds of negotiations to be held under the auspices of the General Agreement on Tariffs and Trade (GATT). The Round got its name from the Ministerial Conference launching the negotiations in September 1986, which was held in Punta del Este, Uruguay. The negotiations were to have been completed in four years, but because of the crises and deadlocks that developed from time to time, they dragged on for over seven years. They were formally concluded at the Ministerial Meeting held in April 1994 in Marrakesh, Morocco. The Final Act embodying its results came into force on 1 January 1995.

I. BACKGROUND TO THE LAUNCHING OF THE NEGOTIATIONS

2. Factors influencing the launching

Broadly speaking, three developments made some GATT member countries feel that there was a need to hold a new round of negotiations.

First, it had become evident that, although as a result of the adoption of associate agreements the rules of GATT in a number of areas had been strengthened, its rules were not being applied in two important trade sectors, viz. agriculture and textiles. In the agricultural sector, most developed countries had taken advantage of the loophole to establish policies that were not always consistent with GATT principles. In the textile sector, a number of these countries imposed restrictions on imports, particularly from developing countries. They did this under the so-called Multi-Fibre Arrangement (the Arrangement Regarding International Trade in Textiles or MFA), which provided a legal cover for derogation from GATT rules against the use of quantitative restrictions. Arrangements like the voluntary export restraints (VERs) proliferated, under which some developed countries restricted competitive imports of certain products. These measures had come to be called "grey area measures" as there were doubts about their consistency with GATT principles and rules.

Second, by about the same time, it had become evident that trade in services had grown into an important component of international trade. The rules of GATT applied to trade in goods and there were no international rules on measures taken by countries to protect their service industries. Opinion was growing therefore that, both for the efficient development of the service industries in different countries and to develop trade in services, it was necessary to bring this trade under international discipline.

Third, industries and trading organizations were complaining that because of differing national standards for the protection of intellectual property rights, such as patents and trademarks, and ineffective enforcement by governments of the national rules providing for such rights, trade in counterfeit goods was on the increase. The absence of adequate protection was also considered a deterrent to foreign investment in the production of patented goods and a reason for the reluctance of industries in developed countries to sell or license technology to industries in developing countries.

3. Positive factors influencing the negotiations

The Uruguay Round negotiations lasted, as noted earlier, over seven years. The reasons for the crises that occurred from time to time are now of historical interest. It would be sufficient to note for the purpose of this Guide that, in the Round's last phase and especially during its last two years, the deadlock among the major players (particularly the United States of America and the European Union) on certain crucial elements in the areas of agriculture and trade in services delayed the successful conclusion of the Round.

On the other hand, certain developments elsewhere had a positive impact on both the negotiating process and its final results. These were:

- A shift in the trade policies of developing countries from import substitution to policies encouraging export-oriented growth;
- The breakdown of communism and the end of the cold war; and
- The adoption of market-oriented reforms.

In many ways, the launching of the negotiations coincided with the decision of a number of developing countries to reorient their trade and economic policies away from import substitution to export-oriented growth. The measures they were taking to reduce tariffs, to liberalize their import control system and to open their doors to foreign investment were consistent with GATT principles, its philosophy and approach. Though these measures were unilateral and were not influenced by the launching of negotiations, they enabled developing countries, including those that were initially sceptical, to take a more constructive attitude to the issues being discussed and to agree to integrate themselves more fully into the legal system that was being formulated. This shift in trade policies and the adoption of market-oriented reforms also led a number of developing countries to seek GATT membership. Simultaneously, with the breakdown of communism, policies favouring privatization and market-oriented reform in the countries that are now called transitional economies prompted most of them to apply for GATT membership.

II. BRIEF DESCRIPTION OF THE RESULTS

4. General

As multilateral negotiations generally involve compromises, the results do not always meet the expectations of individual countries. It is often said that no country leaves the negotiating table as a winner or as a loser. On the whole, however, the negotiations have brought about positive outcomes. In particular they have resulted in:

- An improved framework of multilateral rules governing international trade; and
- Further improvements in access to foreign markets for both goods and services.

One of the other achievements of the Round is the establishment of the World Trade Organization (WTO). GATT has ceased to be a separate institution and has become part of WTO. The organization is responsible for overseeing the implementation of the multilateral rules. The improved mechanism that has been adopted for consultations among member countries when differences arise and for the settlement of disputes is expected to reduce trade friction. The organization also provides a continuing forum for negotiations among its member countries on further trade liberalization and for the elaboration of rules in other areas with an impact on international trade.

5. Improved framework of rules

The improved rules governing international trade are contained in three main legal instruments:

- General Agreement on Tariffs and Trade (GATT) and its associate agreements. These apply to trade in goods.

- General Agreement on Trade in Services (GATS) which applies to trade in services.
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Box A lists the main legal instruments that now form the Uruguay Round legal system.

Box A

THE MAIN LEGAL INSTRUMENTS NEGOTIATED IN THE URUGUAY ROUND

A. Marrakesh Agreement Establishing the World Trade Organization

B. Multilateral agreements

1. Trade in goods
   - General Agreement on Tariffs and Trade 1994 (GATT 1994)

     Associate Agreements

     Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation)

     Agreement on Preshipment Inspection (PSI)

     Agreement on Technical Barriers to Trade (TBT)

     Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)

     Agreement on Import Licensing Procedures

     Agreement on Safeguards

     Agreement on Subsidies and Countervailing Measures (SCM)

     Agreement on Implementation of Article VI of GATT 1994 (Anti-dumping) (ADP)

     Agreement on Trade-Related Investment Measures (TRIMs)

     Agreement on Textiles and Clothing (ATC)

     Agreement on Agriculture

     Agreement on Rules of Origin
   - Understandings and Decisions

     Understanding on Balance-of-Payments Provisions of GATT 1994

     Decision Regarding Cases where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value (Decision on Shifting the Burden of Proof)

Understanding on the Interpretation of Article XVII of GATT 1994 (State trading enterprises)

Understanding on Rules and Procedures Governing the Settlement of Disputes

Understanding on the Interpretation of Article II:1(b) of GATT 1994 (Binding of tariff concessions)

Decision on Trade and Environment

Trade Policy Review Mechanism

2. Trade in services
   - General Agreement on Trade In Services (GATS)

3. Intellectual property rights (IPRs)
   - Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

C. Plurilateral trade agreements
   - Agreement on Trade in Civil Aircraft
   - Agreement on Government Procurement
   - International Dairy Agreement
   - International Bovine Meat Agreement

5.1 Objective, principles and rules of GATT

The basic objective of GATT, which lays down multilateral rules for trade in goods, is to create a liberal and open trading system under which business enterprises from its member countries can trade with one another under conditions of fair and undistorted competition. Even though the detailed rules which GATT and its associate agreements (see box A) prescribe may appear complex and their legal terminology often bewildering, they are based on a few simple principles and rules. In effect, the entire framework of GATT is based on four basic rules.

5.1.1 Four basic rules

Protection to domestic industry through tariffs. Even though GATT stands for liberal trade, it recognizes that its member countries may have to protect domestic production against foreign competition. However, it requires countries to keep such protection at low levels and to provide it through tariffs. To ensure that this principle is followed in practice, the use of quantitative restrictions is prohibited, except in a limited number of situations.

Binding of tariffs. Countries are urged to reduce and, where possible, eliminate protection to domestic production by reducing tariffs and removing other barriers to trade in multilateral trade negotiations. The tariffs so reduced are bound against further increases by being listed in each country's national schedule. The schedules are an integral part of the GATT legal system.

Most -favoured-nation (MFN) treatment. This important rule of GATT lays down the principle of non-discrimination. The rule requires that tariffs and other regulations should be applied to imported or exported goods without discrimination among countries. Thus it is not open to a country to levy customs duties on imports from one country at a rate higher than it applies to imports from other countries. There are, however, some exceptions to the rule. Trade among members of regional trading arrangements, which is subject to preferential or duty-free rates, is one such exception. Another is provided by the Generalized System of Preferences. Under the system, developed countries apply preferential or duty free rates to imports from developing countries, but apply MFN rates to imports from other countries.

National treatment rule. While the MFN rule prohibits countries from discriminating among goods originating in different countries, the national treatment rule prohibits them from discriminating between imported products and equivalent domestically produced products, both in the matter of the levy of internal taxes and in the application of internal regulations.

Thus it is not open to a country, after a product has entered its market on payment of customs duties, to levy an internal tax [e.g. sales tax or value-added tax (VAT)] at rates higher than those payable on a product of national or domestic origin.

5.1.2 Rules of general application

The four basic rules described above are complemented by rules of general application governing goods entering the customs territory of an importing country. These include rules which countries must follow:

- In determining the dutiable value of imported goods where customs duties are collected on an *ad valorem* basis;
- In applying mandatory product standards, and sanitary and phytosanitary regulations to imported products;
- In issuing licences for imports.

The detailed rules applicable in these and other areas are contained in the relevant associate agreements. The main features of these rules are described in box B.

Box B

SUMMARY OF GATT RULES APPLICABLE AT THE BORDER

Determination of dutiable customs values. [See chapter 3.] The Agreement on Customs Valuation protects the interests of importers by stipulating that value for customs purposes should be determined on the basis of the *price paid or payable* by the importer in the transaction that is being cleared by Customs. However, Customs can reject the declared value when it has *reasonable doubts* about the truth or accuracy of the declared value. In all such cases, it has to give importers an opportunity to justify their declared value. Where Customs is not satisfied with the justification, the Agreement limits its discretion by requiring that the value is determined on the basis of one of five prescribed standards.

Application of mandatory standards. [See chapter 5.] Countries often require imported products to conform to the mandatory standards they have adopted to protect the health and safety of their people. The Agreement on Technical Barriers to Trade provides that such product standards should not be formulated and applied in a way as to cause *unnecessary barriers to trade.* Towards this end it calls on countries to use *international standards* where they exist and, where they do not, to base their mandatory standards on scientific information and evidence.

Application of sanitary and phytosanitary regulations. [See chapter 5.] Such regulations are applied by countries to protect their plant, animal and human life from the spread of pests or diseases that may be brought into the country by contaminated fruits, vegetables, meat and other food products. The Agreement on the Application of Sanitary and Phytosanitary Measures requires countries not to apply such regulations in a way that would cause unreasonable barriers to trade and urges them to base their regulations on international standards and guidelines wherever possible.

Import licensing procedures. [See chapter 6.] The Agreement on Import Licensing Procedures sets out guidelines for licensing authorities to follow in issuing import licences and the time limits within which they should be issued, where countries require such licences as a precondition for import.

5.1.3 Other rules

In addition to the rules of general application described above, the GATT multilateral system has rules governing:

- The grant of subsidies by governments;
- Measures which governments are ordinarily permitted to take if requested by industry; and
- Investment measures that could have adverse effects on trade.

5.1.3.1 Rules governing the use of subsidies

Governments grant subsidies for diverse policy objectives. Such subsidies could in practice distort conditions of competition in international trade. The basic aim of GATT rules, which have been further elaborated by the Agreement on Subsidies and Countervailing Measures (SCM), is to prohibit or restrict the use of subsidies that have trade-distorting effects.

The SCM Agreement divides subsidies granted by governments in the industrial sector into prohibited and permissible subsidies.

Prohibited subsidies include export subsidies and subsidies that aim at encouraging the use of domestic rather than imported goods. Prior to the Uruguay Round, the rule prohibiting the use of export subsidies was mandatory only for developed countries. It now applies also to developing countries. The latter have, however, a transitional period of eight years to modify their subsidy practices. Developing countries with a per capita gross national product (GNP) of less than $1,000 and least developed countries are exempted from the rule prohibiting export subsidies.

Permissible subsidies are further divided into two categories: actionable and non-actionable. When imports of products receiving actionable subsidies cause *adverse* trade effects, the affected importing countries can have recourse to remedial measures. Such remedial measures can take the form of countervailing duties when the subsidized imports cause injury to the domestic industry (see below). However, importing countries cannot levy countervailing duties on products that have benefited from the limited number of subsidies that are considered non-actionable.

5.1.3.2 Measures which governments of importing countries can take if requested by domestic industry

The rules further stipulate that certain types of measures, which could have restrictive effects on imports, can ordinarily be imposed by governments of importing countries only if the domestic industry which is affected by increased imports petitions that such actions should be taken. These measures include:

- Safeguard actions;
- Levy of anti-dumping and countervailing duties.

Safeguard actions. The Agreement on Safeguards permits importing countries to restrict imports of a product for a temporary period by either increasing tariffs or imposing quantitative restrictions. Such safeguard actions can be resorted to only when it has been established through properly conducted investigations that a sudden increase in imports (both absolute and relative to domestic production) has caused or threatens to cause *serious injury* to the domestic industry. Safeguard actions cannot be taken if only one or two companies producing a product similar to the imported product are affected. They are permitted solely when it is established that increased imports are causing *serious injury* to the producers accounting for a major proportion of the total domestic production of a product similar to the imported product.

The primary purpose of providing such temporary increased protection is to give the affected industry time to adjust to, and prepare itself for, the increased competition that it will have to face after the restrictions are removed. The Agreement ensures that such restrictions are applied only for temporary periods by stipulating a maximum period of eight years for the imposition of a safeguard measure on a particular product.

Even though the initiative for the commencement of investigations can be taken by governments themselves, in most countries the practice is to initiate such investigations only on the basis of a petition from the affected industry.

Anti-dumping and countervailing duties. It is also open to governments to levy compensatory duties on imported products where it is alleged that foreign suppliers are resorting to *unfair* trade practices. The rules deal with two types of unfair practices that can distort conditions of competition in international trade.

The first is dumping of goods in foreign markets. In common parlance, it is usual to categorize all low-cost imports as dumped imports. The Agreement on Anti-dumping Practices (ADP) lays down strict criteria for the determination of dumping. It stipulates that a product should be treated as being dumped where its *export price* is less than the price at which it is offered for sale in the *domestic market of the exporting country*.

The second is unfair competition, which could result when a foreign company is able to charge low export prices because it has been subsidized by the government.

The ADP Agreement authorizes countries to levy anti-dumping duties on products that are being dumped. Likewise, the Agreement on SCM permits countries to levy countervailing duties on imported products that have benefited from subsidies. The levy of such duties is, however, subject to two important conditions. First, the duties cannot be levied simply on the grounds that the product is being dumped or subsidized. It is essential for the importing country to establish, through investigations carried out at national level, that increased imports are causing *material injury* to the domestic industry. Second, as noted earlier, governments can initiate such investigations if a petition is submitted by or on behalf of the domestic industry, claiming that dumped or subsidized imports are causing material injury to producers accounting for at least 25% of total domestic production.

It should be noted that the standard for determining injury to industry in safeguard actions is much higher than that required for determining injury for the levy of countervailing duties. For safeguard actions, it must be established that the injury to the industry is *serious*, while for anti-dumping and countervailing measures, a lower standard of proof of *material injury* is adequate. The difference is due to the fact that in the case of the former, the problems of the domestic industry in the importing country are not caused by foreign competition, which is fair; in the case of the latter these problems do arise from the unfair trade practices of foreign suppliers. The two Agreements further lay down factors (such as fall in turnover or profits or decline in the labour force) which should be taken into account by the investigating authorities in determining whether industry is being injured by imports.

5.1.3.3 Trade-Related Investment Measures (TRIMs)

Countries often impose conditions on foreign investors to encourage the use of investment according to certain national priorities. Where they have adverse effects on trade, such conditions are known as *trade-related investment measures.*

The Agreement on TRIMs, which has been negotiated in the Uruguay Round, now prohibits countries from using five types of measures that are considered to be inconsistent with the GATT rule of national treatment and the rule which prohibits the application of quantitative restrictions to imported products.

5.2 General Agreement on Trade in Services (GATS)

The General Agreement on Trade in Services aims at extending the rules covering trade in goods to trade in services. The detailed rules have been adjusted to take into account the differences between goods and services and therefore the way in which trade in services takes place.

5.2.1 How trade in services takes place

Services cover a wide range of activities in the areas, for example, of banking, insurance, information, telecommunications, education and recreation. WTO has identified over 150 service sub-sectors.

Whereas goods are tangible and visible, services are intangible and invisible. This basic difference also influences the way in which international trade in services takes place. While goods cross the border of one country and enter the customs territory of another country, very few service transactions involve cross-border movements. In fact, the few services that move across the border are those embodied in goods such as consultants' reports on diskettes. For most service transactions, however, *proximity* between the service provider and the consumer is required. This makes it necessary for service providers to move to the importing country to provide the service. They may do this by establishing a *commercial presence* in the importing country (for instance, by setting up a branch or a subsidiary company). Alternatively, the service providers or experts (natural persons as distinct from legal persons) may go to the importing country for a temporary period to carry out the service activity. Thus, in addition to cross-border movements, trade in services takes place through the *establishment of commercial presence* and the *movement of natural persons*. It is generally believed that the trade in these two modes is significantly larger than that which takes place through cross-border movements.[1]

5.2.2 How protection is granted to service industries

Another major difference between goods and service relates to the way governments grant protection to domestic industries. Industries producing goods are generally protected through the imposition of tariffs and other border measures such as quantitative restrictions. Because of the intangible nature of services and as many services do not involve cross-border movements, protection to service industries cannot be granted through measures applicable at the border. The main means used to protect service industries are *domestic regulations* governing the establishment and operation of service industries. Such regulations may, for instance, prohibit foreign suppliers from establishing branches or impose conditions on foreign suppliers that are more onerous than those applicable to domestic service producers.

5.2.3 Objective and main provisions of GATS

The basic objective of GATS is to establish a framework for liberalizing trade in services. It tries to achieve this by requiring countries to undertake through negotiations *commitments* to modify their *domestic regulations*. Such modifications should result in the gradual removal and, where possible, the elimination of restrictions applied to service products entering the country as well as those applicable to foreign service suppliers carrying out business in the various modes described above.

As with trade in goods, countries are expected to treat foreign suppliers and service products according to the MFN and national treatment principles. The first obliges them to treat foreign suppliers and service products from different countries in the same way. Because of the special features of trade in services, particularly the way in which protection is granted to domestic industries, the obligation to extend national treatment is, however, not as

1 There is a fourth mode in which international trade in services takes place. This happens when it is necessary for consumers, rather than service suppliers, to move to the country of importation. An example of such a trade transaction is tourism.

binding as for trade in goods. Countries are merely urged to undertake *commitments* gradually to reduce the elements in their regulations that discriminate between foreign and domestic service suppliers or result in foreign service suppliers being treated less favourably than domestic suppliers.

These commitments are set out in the national schedules of member countries. GATS obliges its Members not to take measures that would in any way reduce the value of their commitments.

5.3. Agreement on TRIPS

5.3.1 The nature of intellectual property

The Agreement on Trade-Related Aspects of Intellectual Property Rights forms with GATT 1994 and GATS the tripod for the WTO legal system. The objects of intellectual property are the creation of the human mind, the human *intellect*. The rights of creators of innovative or artistic work are known as intellectual property rights. They include copyright (which protects the rights of authors of books and other artistic creations), patents (which protect the rights of inventors) and industrial designs (which protect rights to ornamental designs). They also cover trademarks and other signs that traders use to distinguish their products from those of others and thus build consumer loyalty and goodwill for their marks or brand names.

5.3.2 Background to the negotiations on TRIPS

The unauthorized use of intellectual property is an infringement of the right of the owner. The years before the Uruguay Round witnessed a considerable increase in the production of, and international trade in, counterfeit and pirated goods. This was largely due to the unsatisfactory enforcement of trademark and copyright laws in many countries. In addition, patented technology was being used by manufacturers without licensing from patent owners. The standards of protection as well as the periods for which rights were protected also varied widely from country to country.

5.3.3 Main provisions of the Agreement

The Agreement on TRIPS complements agreements on the protection of intellectual property rights developed by the World Intellectual Property Organization (WIPO). In particular, it prescribes uniform minimum standards and periods for which protection should be granted to different intellectual property rights. Countries are further required not to discriminate among foreign nationals and between foreign and their own nationals in the *acquisition, scope and maintenance* of IPRs (extension of MFN and national treatment). The Agreement also places considerable emphasis on the surveillance of enforcement at the national level of intellectual property legislation and regulations.

5.4 Single undertaking rule

The multilateral legal instruments resulting from the Uruguay Round are treated as a single undertaking. All WTO member countries are required to adopt national legislation and regulations to implement the rules prescribed by GATT 1994 and its associate agreements, GATS and the Agreement on TRIPS. The obligation to abide by the discipline of the plurilateral agreements, however, applies only to WTO member countries which choose to accede to these agreements.

This membership requirement in regard to the multilateral agreements is new. Prior to the Uruguay Round, individual members were free to decide whether to accede to associate agreements. The result was that very few developing countries joined associate agreements such as those on Customs Valuation, Import Licensing and Technical Barriers to Trade. The single undertaking rule has automatically made all WTO members, including developing countries and transitional economies, parties to the associate agreements and other multilateral agreements.

The multilateral agreements, however, recognize that developing, least developed and transitional economies may have difficulties in immediately accepting all or some of the obligations which they impose and provide for the extension of special and differential treatment to these countries. This treatment takes the form of:

- Longer transitional periods for the implementation of some of the obligations the agreements impose. For instance, developing countries have a transitional period of five years — up to 1 January 2000 — to implement the provisions of the Agreement on Customs Valuation and those of the Agreement on Trade-Related Aspects of Intellectual Property Rights.

- For LDCs, longer transitional periods and exemption from some obligations.
- Provision of technical assistance to developing and least developed countries.

6. Improvements in market access

In addition to improving the legal and institutional framework for international trade, the Uruguay Round has significantly widened access to export markets.

6.1 The industrial sector

6.1.1 Reductions in tariffs

As a result of reductions made in earlier GATT rounds, the average tariff levels on industrial products were already low in most developed countries. Under the Uruguay Round agreements, these are to be cut further by 40% in five equal annual instalments. However, the percentage of tariff reductions on some products of export interest to developing countries, such as textiles and clothing and leather and leather products, is much lower than the average, as they are considered import sensitive. A number of developing countries and economies in transition will be reducing their tariffs by nearly two thirds of the percentage achieved by developed countries. As a result, the weighted level of tariffs applicable to industrial products is expected to fall from:

- 6.3% to 3.8% in developed countries;
- 15.3% to 12.3% in developing countries;
- 8.6% to 6% in the transitional economies.

6.1.2 Agreement on Textiles and Clothing

Another important achievement of the Uruguay Round is the decision to phase out restrictions on imports of textiles and clothing. These restrictions were imposed by developed countries mainly on imports from developing countries under bilateral agreements negotiated under MFA, which provided an exception to the GATT rules prohibiting the use of discriminatory quantitative restrictions. The Agreement on Textiles and Clothing (ATC), which now replaces MFA, provides for the removal of restrictions on textiles in four phases over a period of 10 years. This phasing-out programme will end on 1 January 2005. From then on, the trade in textiles will be completely integrated into GATT 1994 and will be governed by its rules.

6.2 Agreement on Agriculture

In the past, the rules of GATT were not always applied fully in the agricultural sector. Some developed countries in particular protected their costly and inefficient production of temperate zone agricultural products (e.g. wheat and other grains, meat and dairy products) by imposing, in addition to high tariffs, quantitative restrictions and/or variable levies on imports. This level of protection often resulted in increased domestic production which, because of high prices, could be disposed of in international markets only under subsidy. Such subsidized sales depressed international prices. They also took away from competitive producers their legitimate market shares.

The Agreement on Agriculture, negotiated in the Uruguay Round, aims at ensuring that basic GATT rules are also applied by all countries to trade in agricultural products. The negotiations undertaken in pursuance of these rules have resulted in some progress in the liberalization of trade in these products. The Agreement has also established a mechanism for future negotiations on the further liberalization of this trade.

Thus the developed countries have agreed to replace quantitative restrictions and other non-tariff measures on agricultural products with tariffs. The new tariffied rates (arrived at by adding the incidence of non-tariff measures to existing tariffs) as well as other tariffs are to be reduced by 30%. For their part, developing countries and economies in transition have agreed to cut their tariffs by nearly two thirds of this average. In addition, all countries have bound all tariffs applicable to agricultural products. In most cases, however, developing countries have given bindings at rates that are higher than their current applied or reduced rates. The countries using subsidies, mostly the developed ones, have agreed to reduce both production and export subsidies by an agreed percentage.

III. BENEFITS TO THE BUSINESS COMMUNITY

7. General

What is the relevance of the Uruguay Round to the decisions that industries and business enterprises make in their international trade activities? When considering this question, one must bear in mind that governments have negotiated improved market access to enable business enterprises to convert trade concessions into new trade opportunities. The objective behind the strengthened rules of the Round is to ensure that the markets remain open and that this access is not disrupted by sudden and arbitrary impositions of import restrictions.

Business communities are, however, not fully aware at present of the advantages which the multilateral trading system resulting from the Uruguay Round can generate for them. The main reason for this is the immense complexity of the system, which has so far prevented these communities from taking an interest in, and getting acquainted with, its rules. It is, for instance, not widely known that the legal system not only confers benefits on producing industries and business enterprises but also creates rights in their favour.

7.1 Benefits of the legal system to the business community

The benefits which the legal system confers on business enterprises and the advantages they can derive from it can be viewed from two different perspectives:

- From the perspective of enterprises as exporters of goods and services;
- From the viewpoint of enterprises as importers of the raw materials, and other inputs and services required for export production.

7.2 Benefits to exporters of goods and services

7.2.1 Security of access

In trade in goods, almost all tariffs of developed countries and a high proportion of those of the developing and transitional economies have been bound against further increases by the Uruguay Round. Binding ensures that the improved market access resulting from the tariff reductions agreed in the Round will not be disrupted by sudden increases in rates of duties or the imposition of other restrictions by importing countries. In trade in services, countries have made binding commitments not to restrict access to service products and foreign service suppliers beyond the conditions and limitations specified in their national schedules.

The secured access to markets which bindings provide enables exporting industries to make investment and production plans under greater conditions of certainty.

7.2.2 Stability of access

The system also provides stability of access to export markets by requiring all countries to apply at the border the uniform set of rules elaborated by the various agreements. Thus countries are obliged to ensure that their rules for determining dutiable value for customs purposes, for inspecting products to ascertain conformity to mandatory standards, or for the issue of import licences, conform to the provisions of the relevant agreements. The adoption of such uniform rules helps export enterprises by eliminating dissimilarities in the requirements of different markets.

7.3 Benefits to importers of raw materials and other inputs

Enterprises often have to import raw materials, intermediate products and services for export production purposes. The basic rule requiring imports to be allowed in without further restrictions upon payment of duties, and the obligation to ensure that the other national regulations applied at the border conform to the uniform rules laid down by the agreements facilitate importing. They give exporting industries some assurance that they can obtain their requirements without delay and at competitive costs. Furthermore, the general increase in tariff bindings under the agreements indicates to importers that their importing costs will not be inflated by the imposition of higher customs duties.

8. Rights which the legal system confers on the business community

In addition to these benefits, the legal system has created certain rights in favour of business enterprises. These rights can be divided into two categories. In the first category are the rights domestic producers and importers obtain vis-à-vis their own governments. In the second are the rights of exporting enterprises to defend their interests when authorities in importing countries contemplate taking action to curtail their exports.

8.1 Rights of domestic producers and importers

A number of agreements require the legislation of member countries to provide certain rights to domestic producers and importers. Governments are obliged to enforce some of these rights under their legal system. In regard to other rights, governments are merely asked to use their *best endeavours* to ensure that the parties concerned can benefit fully from them.

Enforceable rights include those provided for by the Agreement on Customs Valuation which obliges governments to legislate that importers have a right:

- To justify declared value, where Customs expresses *doubts* about the truth or accuracy of that value; and
- To require Customs to give them in writing its reasons for rejecting the declared value, so that they can appeal to higher authorities against the decision.

Rights requiring governments merely to use their best endeavours include those covered by provisions in the Agreement on Import Licensing which call for import licences to be issued within *specified periods* after receipt of application. In this example, unless the national legislation provides otherwise, the importer only has a *right to expect* that the licence will be issued within the stipulated time.

The claim to such rights is often subject to conditions that the domestic industry or enterprise must fulfil. For instance, as noted earlier, an industry has a right to request its government to take safeguard actions or to levy anti-dumping or countervailing duties only if it is possible for the petitioning producing units to satisfy the investigating authorities that its request is supported by *producers who account for a substantial proportion of total production.* The investigating authorities are further required to ascertain whether the petitioner has such *standing* before commencing investigations.

8.2 Rights of exporting enterprises

An example of the rights which the agreements create in favour of exporting enterprises is the *right to give evidence* during investigations in importing countries for the levy of anti-dumping or countervailing duties.

When the authorities in the importing countries fail to honour their rights, the exporting enterprises cannot approach them directly for redress. They must take the matter up with their own governments and leave it to the latter to pursue it on a bilateral basis with the government of the importing country and, if necessary, to raise it under WTO procedures for the settlement of differences and disputes.

8.3 Illustrative list of rights

Box C presents an illustrative list of the benefits and rights which the various legal instruments confer on industry and the trading community. They are taken up in detail in the various chapters of this Guide.

8.4 Effective utilization of WTO dispute settlement procedures

Knowledge of the system will also enable the business and trading communities to help their governments to take full advantage of the WTO mechanism for the surveillance of the implementation of the legal instruments and for the settlement of differences and disputes. Governments will be able to take up such measures for discussion and solution in the appropriate committees only if the exporting enterprises bring marketing problems resulting from violation of the rules to their notice. Furthermore, governments can raise a complaint under the WTO dispute settlement procedures only if the affected industry first raises the complaint and provides the required information.

8.5 Influencing the future course of negotiations

The responsibility of producing and exporting enterprises, however, should not end with bringing to the notice of their governments the practical problems they are encountering. Either they or their national associations must exercise continuous vigilance and closely follow the ongoing work of WTO. It is important to note that negotiations do not end with the adoption of agreements. Further negotiations with important implications for trade are often held during the implementation stage. Unlike the previous GATT system, WTO provides a forum for continuous negotiations. A number of agreements call for

Box C

ILLUSTRATIVE LIST OF BENEFITS ARISING FROM THE URUGUAY ROUND

A. Binding of concessions and commitments

Business implication	Security of access to foreign markets
Rights of exporters	*Trade in goods.* Right to expect that the exported product will not be subject to customs duties that are higher than the bound rates or that the value of the binding will be reduced by the imposition of quantitative and other restrictions.
	Trade in services. Right to expect that access of service products and of foreign service suppliers to a foreign market will not be made more restrictive than indicated by the terms and conditions given in the country's schedule of commitments.
Rights of importers	*Trade in goods.* Right to expect that imported raw materials and other inputs will not be subject to customs duties at rates higher than the bound rates.
	Trade in services. Right to expect that the domestic service industries will be permitted to enter into joint ventures or other collaboration arrangements, if the conditions provided in the schedule of commitments are complied with.

B. Valuation of goods for customs purposes (Agreement on Customs Valuation)

Business implication	Assurance that the value declared by the importer will, as a rule, be accepted as a basis for determining the value of imported goods for customs purposes.
Rights of importers	Importers have a right:
	• To expect that they will be consulted at all stages of the determination of values;

- To justify the declared value, where Customs expresses doubts about the truth or accuracy of the declared value or about the documents submitted;
- To require Customs to give in writing the reasons for rejecting the declared value, so that they can appeal to the higher authorities against the decision.

C. Use of preshipment inspection services (Agreement on Preshipment Inspection)

Business implications

By assisting governments in controlling such malpractices as the over-valuation and under-valuation of imported goods, PSI services help improve the trading environment. Experience has shown that these services speed up clearance of goods through Customs and reduce customs-related corruption.

Rights of exporters

Exporters to developing countries using mandatory PSI services have a right:

- To be informed of the procedures that PSI companies follow for physical inspection and price verification;
- To expect that any complaint they may have regarding the prices determined by the inspectors is considered sympathetically by designated higher officials in the PSI company; and
- To appeal to the Independent Review Entity when they are not satisfied with the decisions of the above-mentioned senior officials.

Benefits to importers

Importers benefit as:

- The utilization of PSI services speeds up customs clearance and in some cases reduces customs-related corruption;

- The physical inspection carried out by PSI companies prior to price verification provides an assurance that imported products will conform to the quality and other terms of the contract.

D. Import licensing procedures (Agreement on Import Licensing Procedures)

Business implication	Assures importers and foreign suppliers that for products for which import licences are required these licences will be issued expeditiously.
Rights of importers	Importers and foreign suppliers have a right to expect: • That the procedures adopted for the issue of licences at the national level conform to the guidelines prescribed by the Agreement; • That they will not be penalized unduly for clerical and other minor errors in the application; • That the licences will be issued within the time periods prescribed by the Agreement.

E. Rules applicable to exports

Reimbursement of indirect taxes borne by exported products

Rights of exporters	Exporters have a right to expect that they will be: • Either exempted from payment of, or reimbursed for, customs duties on inputs used in the manufacture of exported products; • Reimbursed for all indirect taxes borne by the exported products.
Export duties	In addition, exporters have a right to expect that where governments levy export duties for revenue or other considerations, these will be applied at the same rates to exports to all destinations.

F. Anti-dumpling and countervailing actions

Rights of exporters	• Right to expect that exporters alleged to be dumping or exporting subsidized products will be notified immediately after the investigations begin.
	• Right to give evidence to defend their interests in such investigations.
	• Right to expect that procedures will be terminated when preliminary investigations establish that the dumping margin/subsidy element is *de minimis* and imports are negligible.
Rights of domestic producers	• Right to petition for the levy of anti-dumping or countervailing duties where dumped or subsidized imports are causing material injury to the domestic industry, provided the petition is supported by producers accounting for at least 25% of the industry's production.

negotiations to review some or all of their provisions after the expiry of specific periods. In addition, proposals for developing international rules in such areas as *foreign direct investment* and *trade and environment* are being made and decisions to begin negotiations in these and other areas may be taken at the Ministerial Conference scheduled for the end of 1996. Only by following the discussions and making known to their governments their views and concerns will business communities in individual countries be able to ensure that the decisions taken during the implementation of the WTO agreements, as well as the policy approaches adopted by their governments in the negotiations on new subjects, are responsive to their needs and fully reflect the realities of business.

9. Trade and income gains from liberalization

The responsibility falls on business enterprises to convert the tariff reductions and other liberalization commitments which governments have obtained into opportunities for trade by adopting appropriate export promotion and development strategies.

9.1 Estimates of income and trade gains

Various estimates have been made at the macroeconomic level of the gains in income and of the benefits to international trade that will flow from the implementation of the results of the Uruguay Round. These estimates, however, are confined to trade in goods. Detailed trade statistics on services are not yet available. The estimates also exclude the beneficial effects which strengthened international rules and the ensuing increased security and stability of access can have on the growth of international trade.

Estimates of gains vary according to the assumptions made and the methodologies used. WTO has, for instance, estimated, by using three different versions of its analytical model, that the annual gain in world income will range from $110 billion to $510 billion in 2005. The distribution of gains could vary from region to region. The income gain of developing countries is expected to be equivalent to about one third of the total. While the dynamic economies of East and South-East Asia will be the main beneficiaries, the African countries and the least developed countries in other regions will benefit only marginally, if at all.

As regards trade, the same estimates indicate that merchandise trade will increase by 9% to 24% in the year 2005, depending on the version used. This growth will be higher than the current average rate of 4% by which world trade in goods is growing. The product groups in which higher growth rates are expected are in the sector of industrial goods, including textiles and clothing, transport equipment, fishery products and other manufactures. In the agricultural sector, products in which higher growth is expected include forestry products and selected agricultural products. In general, developing countries are expected to increase their trade in labour-intensive goods and developed countries in products that require high capital inputs.

9.2 Need for caution in interpreting macroeconomic studies

While macroeconomic studies provide guidelines that may be useful to the business community, their findings have to be interpreted with caution, particularly in planning for the future and in day-to-day decision-making. There are three reasons, among others, for such caution. First, the estimates are susceptible both to the assumptions made and the methodologies used. Even the three versions of the WTO model mentioned above give widely different results. Second, the realization of the estimated gains may be delayed, and even frustrated, if commitments are implemented in form rather than in substance. There are growing apprehensions that this may happen in relation to at least some of the commitments undertaken in the Uruguay Round. In the case of textiles, for instance, the major trade gains are expected to result from removal over a period of 10 years of the discriminatory import restrictions applied in developed country markets under MFA. There are, however, new definite indications that very few restrictions will be lifted in the first half of the 10-year period and that the bulk of the restrictions could be eliminated only in the last stage of that period.

The impact of liberalization may also differ for enterprises in different countries. Take the case of textiles, on which restrictions are applied on a discriminatory basis by importing countries. Enterprises in country A whose exports had been restricted may find that they can benefit from the removal of restrictions on their main markets and therefore adopt production and export strategies to take advantage of the improved opportunities for trade. By contrast, enterprises in country B whose exports had not been so restricted will have to prepare themselves to cope with the increased competition that will follow the removal of restrictions on imports from country A.

Likewise, enterprises from countries benefiting from preferential tariff access in their major developed markets may find this access cut back by the MFN reductions resulting from commitments made in the Uruguay Round. The macroeconomic studies indicate that the reductions in preferential margins may not have any overall negative effects on the trade of preference-receiving countries. However, individual exporting enterprises may find that the loss of these margins could, in fact, have adverse trade effects. This could happen if the preferential margins were meaningful in actual trade, taking into account such factors as the prices charged by other suppliers in the importing market.

It is therefore important for business enterprises to supplement macroeconomic studies with microeconomic reviews assessing the impact on their products of tariff reductions and the removal of barriers in their target markets. As the lack of financial and technical resources may prevent enterprises, particularly SMEs, from carrying out such studies themselves, national research institutions will have to take the initiative in this regard. International organizations like the Commonwealth Secretariat and ITC could also assist by preparing such studies for products in which a number of developing and least developed countries have an export interest.

9.3 Trade in services

In trade in services, the adoption of GATS has mainly created a framework for future trade liberalization. At present, most of the commitments given reaffirm or bind existing practices, and do not involve any significant removal of barriers. These commitments in effect amount to a halt in the introduction of new restrictive measures. Only a few of the commitments made genuinely provide for the liberalization of trade.

10. Summing up

The primary responsibility for taking advantage of the liberalization measures negotiated by governments now falls on business enterprises. Trade does not expand automatically in the wake of tariff reductions and the removal of trade barriers. This will happen only if business enterprises adopt appropriate export development strategies to take into account the impact of the liberalization measures on the products they export.

The implementation of the Uruguay Round results will create both opportunities and challenges for the business community. The challenge will come from the increased competition in both domestic and foreign markets that will follow the removal of tariffs and other barriers. The establishment of the WTO and the improved legal system that has emerged from the Round is expected to ensure that such increased competition remains fair and equitable. The legal system has also created in favour of the business community a number of rights. As has been said repeatedly, its ability to benefit from the system and these rights will depend on its knowledge and understanding of the system's detailed rules.

The chapters that follow elaborate on the points made in this overview and explain in detail both the rules and the trade and income gains that could result from the implementation of the Round's liberalization package.