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THE GENERAL AGREEMENT ON TARIFFS AND TRADE

Uruguay Round Final Act Should Produce Overall U.S. Economic Gains

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Volume 2

Preface

This volume of GAO's study of the General Agreement on Tariffs and Trade's (GATT) 1994 Uruguay Round (UR) agreement is a reference document assessing the major issues associated with the agreement. Our assessment (1) discusses the original trading problems that led to the Uruguay Round negotiations; (2) identifies the U.S.' specific negotiating objectives; (3) presents the results of negotiations as provisions of the final agreement; (4) analyzes the likely impact of the agreement, including whether it resolves the original trading problems; and (5) discusses issues that remain in contention and those that require further evaluation.

We report information on the Uruguay Round's efforts to liberalize trade and investment worldwide, the creation of the World Trade Organization (WTO), the potential impact of the agreement, and in appendix I future WTO issues evolving from the UR. Specifically, we address six major areas of the agreement:

- the agreement's efforts to facilitate increased worldwide trade in goods through reduction in tariffs (ch. 2);
- the agreement's creation of WTO and related revised dispute resolution procedures (ch. 3);
- the agreement's revision of multilateral trade rules provisions: subsidies, antidumping, and safeguards (ch. 4);
- the agreement's expansion of coverage to new areas: intellectual property, services, and trade-related investment (ch. 5);
- the agreement's further expansion in areas already covered by GATT: agriculture, textiles and clothing, government procurement, and trade and the environment (ch. 6); and
- other negotiations linked to the Uruguay Round: multilateral steel and aircraft subsidies negotiations (ch. 7).

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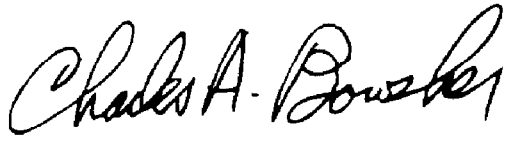

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Abbreviations

ACTPN	Advisory Committee on Trade Policy and Negotiations
AD	antidumping
CAFE	Corporate Average Fuel Economy
CEA	Council of Economic Advisers
CFTA	Canadian Free Trade Agreement
CRS	Congressional Research Service
CVD	countervailing duty
ECU	European Currency Unit
EFTA	European Free Trade Association
EPA	Environmental Protection Agency
EPI	Economic Policy Institute
ESI	Economic Strategy Institute
EU	European Union
FDI	foreign direct investment
FOGS	Functioning of the GATT System
G-7	Group of Seven leading industrial nations

GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
GNP	gross national product
GSP	Generalized System of Preferences
IBM	International Business Machines
IFAC	Industry Functional Advisory Committee
IIE	Institute for International Economics
IMF	International Monetary Fund
IPAC	Industry Policy Advisory Committee
IPC	Intellectual Property Committee
IPR	Intellectual Property Rights
ISAC	Industry Sector Advisory Committee
ITC	International Trade Commission
ITO	International Trade Organization
LCA	large civil aircraft
MFA	Multi-Fiber Arrangement
MFN	most favored nation
MSA	Multilateral Steel Agreement
NAFTA	North American Free Trade Agreement
NAM	National Association of Manufacturers
OECD	Organization for Economic Cooperation and Development
TNC	Trade Negotiations Committee
TRIMs	Trade-Related Investment Measures
TRIPs	Trade-Related Aspects of Intellectual Property Rights
U.N.	United Nations
UNCED	United Nations Conference on Economic Development
UPOV	International Union for the Protection of New Varieties of Plants
UR	Uruguay Round
USDA	U.S. Department of Agriculture
USTR	U.S. Trade Representative
VRA	voluntary restraint agreement
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Introduction

Background

Meeting in Marrakesh, Morocco, on April 15, 1994, the leaders from more than 117 countries signed the Final Act of the General Agreement on Tariffs and Trade (GATT) Uruguay Round (UR) negotiations. As the most comprehensive and ambitious GATT agreement ever completed, the UR agreement is expected to boost annual global income by $235 billion in the year 2005, according to estimates from the GATT Secretariat.

Implementation of the UR agreement is meant to further open markets by reducing tariffs[1] worldwide by one-third; strengthen GATT as an institution through the creation of a World Trade Organization (WTO) and a revised multilateral dispute settlement mechanism; improve "disciplines," or GATT procedures, over unfair trade practices;[2] broaden GATT coverage by including areas of trade in services, intellectual property rights, and trade-related investment that previously were not covered; and provide increased coverage to the areas of agriculture, textiles and clothing, government procurement, and trade and the environment. Further, studies of the expected impact of the UR agreement anticipate net gains to the United States and world economies although estimates vary as to the size of the gain.

Nevertheless, concerns exist among some U.S. industry sectors and Members of Congress that (1) the U.S.' independence in conducting trade policy could be affected by the new WTO and the revised dispute settlement mechanisms, (2) the creation of permissible subsidies under the UR agreement expressly for research and development could promote a de facto industrial policy for the United States in which the government actively supports selected industries, and (3) some specific industries would suffer from the effects of increased competition and resource reallocation.

History of GATT and the Uruguay Round

The Uruguay Round of GATT has a long history.[3] Wanting to prevent a return to the disastrous protectionistic measures of the 1930s, over 50 countries began work in 1947 on a draft Charter for an International Trade

[1]Tariffs are a tax on imported goods to raise revenues and protect domestic industries from foreign competition.

[2]Unfair trade practices include the dumping of an exported product below the price charged for the same good in the "home" market of the exporter, or the subsidizing of a product by a government. Throughout this volume, articles of the original 1947 GATT agreement and subsequent rounds through the Kennedy Round are identified by roman numerals, and the articles of the Tokyo and UR agreements are identified by arabic numbers.

[3]Portions of this section are based on Lenore Sek, Trade Negotiations: The Uruguay Round, Economic Division, Congressional Research Service, Library of Congress (Washington, D.C.: Feb. 8, 1994)

Organization (ITO). The draft covered not only trade but also rules concerning employment, commodity agreements, restrictive business practices, international investment, and services. ITO was seen as a complement to other international institutions—the International Bank for Reconstruction and Development (the World Bank) and the International Monetary fund (IMF)—created to promote global economic recovery and development.

Although the ITO charter was agreed to in a United Nations (U.N.) conference in Havana, Cuba, in 1948, the U.S. Congress did not support creating the organization. However, negotiations had simultaneously begun among 23 nations—including the United States—aimed at reducing tariff barriers, and these nations adopted some of the trade rules contained in the draft ITO charter. The tariff concessions reached by the 23 nations, along with the rules they adopted, were called the "General Agreement on Tariffs and Trade," and they entered into force in January 1948. Because a permanent ITO was not created, GATT became a provisional arrangement, and its members became "contracting parties." GATT has remained the only multilateral instrument governing international trade, founded on the belief that free trade would help the economies of all nations grow.

Before the UR, signatory countries had conducted seven prior rounds of trade negotiations. The first five rounds, completed between 1947 and 1962, concentrated on reducing tariff rates and eliminating quantitative restrictions on trade in manufactured products. The sixth round, the Kennedy Round, lasted from 1962 to 1967. Like the first five rounds, it focused on tariff cuts, but it also addressed for the first time certain nontariff barriers to trade, such as antidumping practices.

The seventh round, the Tokyo Round, lasted from 1973 to 1979. In addition to agreeing to further cuts in tariff rates, negotiators developed a series of agreements, or codes of conduct, which set rules for addressing nontariff barriers to trade. The agreement on tariffs reduced rates on trade in manufactured goods among major developed countries by an average of about 34 percent. Negotiators in the Tokyo Round also developed new GATT rules for subsidies[4] and countervailing measures,[5] technical barriers

[4]Subsidies are generally considered to be a bounty or a grant provided by a government that confers a benefit on the production, manufacture, or distribution of a good. (GATT rules would not usually apply to government assistance for defense-related goods). Government subsidies include direct cash grants, concessionary (below-market-interest rate) loans, loan guarantees, and tax credits.

[5]Countervailing measures are defined as special customs duties imposed by importing countries to offset the economic effect of a subsidy and thus prevent injury to domestic industries caused by subsidized imports.

to trade, import licensing procedures, government procurement, customs valuation, and antidumping measures.[6]

Uruguay Round

Although past GATT negotiations had made significant accomplishments in removing barriers to trade, many observers maintained that important reforms were still needed to improve GATT rules and procedures, to strengthen the codes negotiated in the Tokyo Round, and to expand the coverage of GATT to new areas of international trade in order to become more relevant to the new global trading environment. This new environment was characterized by the integration of national economies into the world economy and by increased international investment and trade in services.

A conference in Punta del Este, Uruguay, in September 1986 launched a new round of GATT negotiations—called the Uruguay Round. The ministerial declaration signed by trade ministers at the conclusion of the conference set the agenda for the UR and called for the completion of the UR within 4 years. (The UR actually lasted more than 7 years.) The declaration established a Trade Negotiations Committee (TNC) that had oversight of the negotiations, and two groups that reported to TNC: a Group of Negotiations on Goods and a Group of Negotiations on Services.

In December 1988, a ministerial-level, midterm review of progress began. The review was intended to assess progress during the first half of the UR and to establish framework agreements for negotiations over the rest of the UR. Of the 15 issues under negotiation, framework agreements were reached on 11 issues. The principal unresolved issue was agriculture. The entire package of agreements was put on hold while the contracting parties (mainly the United States and the European Community, now called the European Union) continued negotiations on agriculture.

In December 1990, trade ministers held a meeting in Brussels, Belgium, with the intent of reaching a final trade agreement and ending the UR. However, the United States and the European Union (EU) continued to argue over agriculture, and the meeting ended without success. After 2 months of intensive consultations with major parties, the GATT Director General (then Arthur Dunkel) said that a basis for continuing the talks had been reached, and he reconvened the negotiators.

[6]Antidumping measures are defined as a duty or fee, imposed to neutralize the injurious effect of unfair pricing practices.

In December 1991, Director General Dunkel proposed a 450-page draft final text, and negotiators agreed to use the text as a basis for their continuing talks. This Dunkel text also set out much of the structure and detail of the final Uruguay Round agreement that was reached 2 years later. After slow progress, a breakthrough came in November 1992, when the United States and the EU resolved a major agricultural trade dispute over EU subsidies for soybean production. As part of that settlement, which is referred to as the "Blair House Accord," the two trading partners also resolved broader agricultural trade problems that had been stalling the UR.

During the first half of 1993, little progress was made in the talks, partly because of leadership changes in the United States, the EU, and GATT. Headway occurred in July 1993, at the annual economic summit of the seven leading industrial nations (the Group of Seven—G-7),[7] when the United States, the EU, Japan, and Canada (the Quad) reached a major agreement on industrial tariffs. Under this agreement on industrial goods, the Quad said they would reduce tariffs to zero on eight products, harmonize tariffs on certain chemical products, reduce peak tariffs on three groups of products, and cut tariffs by an average of 33 percent on five product groups.

Also in July 1993, Congress set new deadlines for fast-track procedures to apply to a UR trade agreement. Under Public Law (P.L.) 103-49, the President had to notify Congress no later than December 15, 1993, of his intent to enter into a trade agreement before April 15, 1994 (allowing a 120-day period for congressional review). Negotiators then targeted mid-December for conclusion of the UR.

On December 15, 1993, GATT Director General Sutherland gaveled the UR to an end, and President Clinton notified Congress that he intended to enter into a UR trade agreement. And, in April 1994, GATT member-nation officials signed the UR "Final Act."

Overall and U.S. Uruguay Round Objectives Generally Achieved

The UR agreement generally achieved the objectives of the negotiations, according to U.S. Trade Representative (USTR) officials. These objectives, set out in the 1986 ministerial declaration, were designed to bolster the multilateral trade regime by (1) opening markets through reducing tariffs

[7]G-7 members include the United States, Canada, the United Kingdom, Japan, Germany, France, and Italy.

and eliminating certain nontariff barriers[8] and subsidies; (2) strengthening international disciplines and procedures dealing with unfair trade practices; (3) broadening GATT principles to areas not previously covered, such as trade in services, investment, and intellectual property rights; and (4) extending more effective disciplines to agricultural trade.

Likewise, the United States was successful in achieving most of its own goals for the UR as set out by Congress in the 1988 Omnibus Trade and Competitiveness Act (19 U.S.C. 2901). For example, in the 1988 act Congress sought to (1) achieve better access to foreign markets for competitive U.S. industries by reducing both tariff and nontariff barriers; (2) adopt a more timely and effective dispute resolution mechanism; (3) reduce trade-distorting and foreign government subsidies and unfair trade practices in a variety of sectors; (4) extend GATT coverage to services, a sector that yielded about a $67-billion trade surplus for the United States in 1993; and (5) increase protection against unauthorized use of patented and copyrighted products.

As discussed in volume 1, while generally both sets of negotiating objectives were achieved, some provisions and potential effects of the agreement are subject to a variety of interpretations and concerns from a number of U.S. industries and other sources. Some U.S. industries are disappointed by what they perceived as inadequate access to overseas markets, and some are concerned about losing protection provided by U.S. trade laws. In addition, a number of questions remain about the implementation of the agreement that the United States should be mindful of so that U.S. interests are not compromised. (See the following chapters of this report.) And continued tracking by the United States of unfinished UR agenda items is also essential. For example, negotiations were postponed in the telecommunications, financial services, audiovisual, and steel sectors (see chs. 5 and 7).

Advisory Committees Important in Formulating U.S. Negotiating Position

According to USTR, private sector advisory committees were very important in developing the U.S.' negotiating position in the UR. The U.S.' negotiating position, coordinated by USTR, was formulated using extensive congressional and private sector consultations, according to USTR. In addition to holding briefings with trade associations and private sector organizations throughout the country, USTR relied heavily on its federally

[8]GATT has developed more than 40 categories of nontariff barriers. Most of them are measures used at the border to restrict the inflow of foreign goods. They can be classified into five groups: quantitative import restrictions such as quotas; voluntary export restraints; price controls; tariff-type measures such as seasonal tariffs; and monitoring measures.

mandated private sector advisory committees. The private sector advisory system consists of almost 40 committees, with a total membership of approximately 1,000 advisers. The system is arranged in tiers: the President's Advisory Committee on Trade Policy and Negotiations (ACTPN); seven policy advisory committees;[9] and more than 30 technical,[10] sectoral,[11] and functional advisory committees. [12] By providing technical advice to U.S. negotiators, the industry sector and functional advisory committees form the backbone of the advisory system. These advisory committees submitted advisory reports on the UR agreement to Congress between January 12 and 15, 1994. The results of these reports, including support for and concerns about the UR agreement, are reflected in the subsequent chapters of this report.

Objectives, Scope, and Methodology

We prepared this report on the Uruguay Round agreement's major issues to assist Congress in its deliberations on the agreement. We focused on six major issues of the UR—market access efforts, creation of WTO, revision of GATT trade rules, expansion of GATT coverage to new areas, further expansion of GATT in areas already covered, and the status of other negotiations linked to the Uruguay Round. For each issue our objective was to obtain information on and assess (1) the original trading problems that led to the negotiations, (2) the U.S.' specific negotiating objectives, (3) the results of the negotiations as reflected in provisions of the final agreement, (4) the possible impact of the agreement including whether it resolves the original trading problems, and (5) any issues that remain in contention or require further evaluation by the United States. (See app. I for future WTO issues.)

[9]The seven policy-level committees are the Agricultural, Defense, Industry, Investment, Intergovernment, Labor, and Services Policy Advisory Committees.

[10]The agricultural technical advisory committees include the Committee on Cotton, Dairy Products, Fruits and Vegetables, Grains and Feed, Livestock and Livestock Products, Oilseed and Oilseed Products, Poultry and Eggs, Tobacco, Sweeteners and Tropical Products, and Processed Foods.

[11]The industry sector advisory committees include the Committee on Aerospace Equipment; Capital Goods; Chemicals and Allied Products; Consumer Goods; Electronic and Instrumentation; Energy;, Ferrous Ores and Metals; Building Products and Other Materials; Lumber and Wood Products; Nonferrous Ores and Metals; Paper and Paper Products; Services; Small and Minority Business; Textiles and Apparel; Wholesaling and Retailing; Footwear, Leather and Leather Products; and Transportation, Construction, and Agricultural Equipment.

[12]The industry functional committees are the Customs Matters, Standards, and Intellectual Property Rights Industry Functional Advisory Committees.

To obtain information on the trade problems that lead to the UR, the U.S.' negotiating objectives, the results of the negotiations, the possible impact of the agreement, and any issues that remain in contention and/or require further evaluation, we reviewed government and institutional documents and studies from the United States (i.e., the U.S. International Trade Commission (ITC), USTR publications, and the Congressional Research Service (CRS)), the EU, and the GATT Secretariat. In the United States, we interviewed negotiators and other officials from the Office of the U.S. Trade Representative; the U.S. Departments of Agriculture, Commerce, Labor, State, and the Treasury; and ITC. We also met with officials at the U.S. Mission to the EU in Brussels and at the U.S. Mission to GATT in Geneva. In Brussels, we interviewed negotiators and officials at the Commission of the European Union, and international trade attorneys. In Geneva, we interviewed GATT member-nation negotiators and officials, and high-level GATT Secretariat officials.

Information in this report interpreting the UR agreement's provisions is drawn from a number of sources, including what U.S., EU, and developing nations' negotiators and officials, and GATT Secretariat officials provided in interviews and in written documentation. We also drew upon our previous reports.

In order to provide additional perspective on the results and potential impact of the UR agreement, we analyzed other reports and studies, such as ACTPN, the Industry Policy Advisory Committee (IPAC), and Industry Sector and Industry Functional Advisory Committee (ISAC and IFAC) reports; studies by the Institute for International Economics (IIE), the Economic Policy Institute (EPI), and the Economic Strategy Institute (ESI); and articles published in various private books and journals. We did not verify the accuracy of the information provided in these reports and studies.

To obtain additional information on the UR agreement's potential impact, we reviewed papers presented at various conferences on the results of the UR. We also interviewed representatives at the U.S. Council on Competitiveness, the U.S. Chamber of Commerce, the University of Michigan's Economics Department; at various associations such as the National Association of Manufacturers, the Motion Picture Association of America, the Pharmaceutical Manufacturers Association; and at various U.S. trade law firms, think tanks, and consulting firms.

We conducted our work between August 1993 June 1994 in accordance with generally accepted government auditing standards.

On July 13, 1994, we met with the Counselor to USTR, the Assistant USTR for Economic Affairs, and the Deputy Assistant USTR for Multilateral Trade Negotiations to obtain their comments on our report. The USTR officials agreed with the report's basic message that the agreement is in the overall national economic interest and felt it was balanced in its presentation of the issues. Specifically, they stated that our presentation of the issues surrounding WTO, permissible subsidies, and GATT's budget implications was accurate and fair, as was our discussion of negotiating objectives achieved and the economic benefits and costs of the Final Act.

Regarding clarifying comments, USTR officials suggested that additional balance would be added to the issue of job losses in the U.S. textile and apparel industry due to implementation of the Final Act by including job loss figures on this issue from ITC's November 1993 study, The Economic Effects of Significant U.S. Imports Restraints. We made the appropriate changes to the report based on our review of the ITC study.

In May 1994, we assured the technical accuracy of our report, through discussions with

- USTR officials responsible for negotiating each of the various components of the UR agreement;
- GATT Secretariat officials administering various components of the UR negotiations, including agriculture, textiles, and intellectual property;
- Several program officials from the U.S. Departments of Commerce, Agriculture, and the Treasury, such as Commerce Department Patent and Trademark officials, and Treasury Department International Investment officials; and
- Various private sector trade experts, including representatives of industries affected by the UR agreement,such as the motion picture, steel, textile, pharmaceutical, recording, banking, and telecommunications industry; and trade lawyers expert in antidumping, countervailing duties, and dispute settlement.

We included their technical and clarifying comments where appropriate in volumes 1 and 2.

Market Access Achievements

The market access for goods agreement is a key part of the Uruguay Round's overall goal of liberalizing international trade by further opening markets among GATT countries. It is essentially a set of tariff schedules[1] which reflect the concessions agreed upon by the GATT signatories. As described in other chapters of this report, the Uruguay Round addressed many issues and would reduce trade barriers in agricultural products as well as services. The main contribution of the market access agreement, however, would be to significantly lower, or eliminate, tariff and nontariff barriers and to expand the extent of tariff bindings,[2] on industrial products among GATT signatories. The global economic impact of the market access agreement, according to USTR, the GATT Secretariat, and two expert studies, is expected to be considerable by the end of the decade and into the next century.

Background

From its inception in 1947, GATT had as one of its primary goals the promotion of free trade internationally by reducing worldwide tariffs. From the beginning of the 19th century until the 1930s, worldwide tariffs rose steadily, culminating with the U.S. Tariff Act of 1930 (as amended, codified as amended at various sections of titles 6, 19, and 22, referred to as the Smoot-Hawley Tariff Act), which raised U.S. tariffs to record high levels. In response, a majority of U.S. trading partners pushed their tariffs even higher, and international trade was severely constricted. In fact, the severity of worldwide Depression of the 1930s was partly attributed to the widespread imposition of very high tariffs.

Before the creation of GATT, countries negotiated tariff levels bilaterally. For example, from 1934 to 1945, the United States entered into mutual tariff reduction agreements with 29 countries. Despite such trade agreements, many countries continued to levy significant tariffs on imports. One reason was the lack of assurance that tariff concessions granted would not be withdrawn or modified, since under the bilateral approach two countries could modify their bilateral tariff concessions, or one country could readily abrogate the agreement without significant

[1]The initial GATT consisted of both schedules of tariff commitments, one for each of the contracting parties, and a set of rules drafted primarily to protect the evasion of tariff commitments. Tariff schedules are a long list of products containing various tariff rates. Each contracting party is committed not to raise its tariffs above the duty level contained in the schedule.

[2]When a country agrees to "bind" a tariff on a product at a certain level, e.g., 15 percent, it commits itself not to increase the tariff above that level (except by negotiation with compensation for affected partners). If a GATT signatory raises a tariff to a higher level than its bound rate, the beneficiaries of the binding have a right under GATT to retaliate against an equivalent value of the offending country's exports, or to receive compensation, usually in the form of reduced tariffs on other products they export to the offending country.

ramifications. The advantage of a multilateral approach like that of GATT was that concessions could only be modified with the approval of all contracting parties.

To ensure the predictability of tariff concessions, a long-standing goal of GATT was to increase the number of tariff bindings of GATT contracting parties. In the Uruguay Round, some GATT signatories, especially developing countries, had a low level of tariff bindings. Tariff bindings are significant for several reasons. If a tariff lowered during a GATT round could be raised again unilaterally a few months later, that tariff concession would have little or no value to foreign and domestic producers. An exporting firm might hesitate to pursue new markets if the products it intends to export face uncertain treatment. This is particularly true when lower tariffs induce a firm to invest in a plant, equipment, and distribution networks. Such investments would become unprofitable should tariffs raised back to their original levels. Domestic producers counting on imported inputs would also face damaging uncertainty should their national government be able to, at any time, raise a previously lowered tariff.

Tariff reduction has been the major focus of the seven GATT multilateral negotiating rounds, and tariffs have gone down from an average level of 40 percent before GATT, to 3.9 percent after the Uruguay Round. However, during the Uruguay Round, problems, such as tariff escalation[3] and tariff bindings, remained important subjects of negotiation. In addition, although developed countries' tariff rates averaged 5 percent, developing countries had higher average tariff rates. According to a 1990 USTR report,[4] average tariff rates of over 50 percent were not rare in developing countries. For instance, India and Pakistan had average rates of over 100 percent. The report pointed out that even some developed countries had relatively high tariff rates. New Zealand and Australia, for example, imposed average tariff rates of 20.8 percent and 15.3 percent, respectively. Finally, some developed countries still maintained high tariffs on selected industrial or agricultural products.

[3]Tariff escalation occurs whenever a country imposes substantially higher duties on partially and fully processed goods than on their underlying raw materials.

[4]U.S. Trade Representative, United States Proposal for Uruguay Round Market Access Negotiations 6 (Mar. 15, 1990).

U.S. Negotiating Objectives

The 1986 ministerial declaration on the Uruguay Round clearly reflected a consensus that tariffs should be reduced or eliminated:

Negotiations shall aim, by appropriate methods, to reduce or, as appropriate, eliminate tariffs including the reduction or elimination of high tariffs and tariff escalation. Emphasis shall be given to the expansion of the scope of tariff concessions among all participants.

The Mid-Term Ministerial Meeting held in Montreal, Canada, in December 1988, added to the 1986 Punta del Este Declaration a call for tariff reductions of 33 percent on a trade-weighted basis,[5] and the reduction or elimination of high tariffs, tariff peaks (defined as tariffs above 15 percent), tariff escalation, and low tariffs. The ministers further agreed that the scope of tariff bindings must increase. The Punta del Este and Montreal meetings also specified that developing countries would not be required to make concessions that were inconsistent with their developmental, financial, and trade needs.

A subject of debate at the first meetings of the tariff negotiating group had been the issue of what base rate should be used for the negotiations. The dispute surrounding the base rates had dealt with whether substantive tariff reduction negotiations should begin with the tariff rates actually applied by member countries, or with the rates at which the countries' rates were bound under prior GATT agreements. The developing countries, supported by the United States, favored negotiating from bound rates, since in many developing countries, bound rates were much higher than applied rates.[6] On the other hand, several developed countries proposed that negotiations start with rates actually applied.

Significantly, the ministers at Montreal agreed to use bound tariff rates rather than applied rates as the baseline in the negotiations. Thus, particularly in cases where the bound rate had been significantly higher than the applied rate, the negotiation of a large tariff reduction might in actuality be small, as the country continues to charge the applied rate. The reduction is significant in that the new lower bound rate is guaranteed not to increase.

The formal start of the Uruguay Round negotiations was delayed by a debate over which method should be used to negotiate tariff levels.

[5]Under tariff reduction on a trade-weighted basis, the average tariff is computed by weighing each tariff rate by the dollar value of imports at that rate relative to the total value of imports.

[6]Applied rates are the actual tariff rates member countries currently apply to imports.

Countries realized that the outcome of the Uruguay Round, in particular the extent of tariff reduction achieved, could be significantly affected by the negotiating methodology. For example, the first five GATT rounds used the product-by-product request-offer basis,[7] the Kennedy Round used the linear approach,[8] and the Tokyo Round applied the harmonizing formula method.[9]

The United States believed that the request-offer approach worked best to allocate tariff reductions uniformly among GATT signatories, while most other developed countries favored the harmonizing formula method. The United States claimed that under the harmonizing formula approach used in the Tokyo Round, some countries chose not to apply the agreed-upon formula to their own tariffs, yet still enjoyed the benefits of other GATT members' tariff reductions due to the Most-Favored-Nation (MFN) principle.[10] Furthermore, the United States contended that the harmonizing formula method was less likely to result in total elimination of tariffs for particular products. The majority of the developed countries, on the other hand, claimed that a harmonizing formula approach would attain a more balanced result by distributing tariff reductions across each country's set of tariff schedules.

The participants agreed in February 1990 that no single negotiation method would meet all of their economic and political needs. Therefore, they said that each delegation should be free to follow its own approach as long as the 33-percent tariff reduction and other objectives agreed upon in Montreal were achieved.

In an important step toward achieving the ministerial declaration to "as appropriate, eliminate tariffs," the United States tabled a proposal in March 1990 which sought "zero-for-zero" tariff treatment. The United States would permanently reduce tariffs to zero for a number of product

[7]Under the request-offer approach, a contracting party submits requests for concessions on tariff reductions from its trading partner, which, in turn, submits its offer for concessions. The offers are then negotiated by the parties' representatives.

[8]Under the linear formula, all rates in the tariff schedules are reduced across the board by a specific formula, such as a certain percentage.

[9]The harmonizing formula applies a formula to cut high tariff rates, termed "peak" tariffs, by a greater percentage than applied to low tariffs. Thus, the goal is to lower tariffs and to achieve more consistent tariff levels among contracting parties.

[10]An MFN provision is a promise in a treaty or agreement to extend to the contracting nation the best trade privileges granted to any other nation. MFN is a commitment that a country will extend to another country the lowest tariff rates it applies to any third country. All contracting parties undertake to apply such treatment to one another under Article I of GATT. When a country agrees to cut tariffs on a particular product imported from one country, the tariff reduction automatically applies to imports of this product from any other country eligible for MFN treatment.

sectors on a reciprocal basis, through a request-offer approach. Reactions to the U.S. proposal varied among participants. In December 1990, the developed countries agreed to accept the U.S. zero-for-zero tariff proposal on pharmaceuticals and on some construction equipment. Further progress on the tariff negotiations was delayed shortly thereafter due to a breakdown in agricultural talks, which centered on the level of domestic and export crop support provided by countries. (See ch.6 for a full discussion of the agriculture section of the Uruguay Round agreement.)

At the July 1993 G-7 Summit in Tokyo, the United States, Canada, the EU, and Japan achieved what the U.S. Trade Representative called "a major breakthrough," agreeing to numerous changes (see ch.1, p.7). This informal agreement would eventually be the basis for the market access agreement in the UR agreement.

Results of the Uruguay Round

According to USTR, the United States achieved substantially all of its major objectives in the market access negotiations for industrial goods. The tariff agreements reached during the negotiations are to be reflected in the tariff schedules of the signatories. GATT members submitted final tariff schedules to GATT on March 25, 1994. The Uruguay Round agreement requires a country to annex its schedule to the Protocol[11] in order to become a member of the World Trade Organization, created to succeed GATT (see ch. 3).

Generally, according to USTR, by reducing tariffs on specific items of key interest to U.S. exporters, the agreement would provide its signatories significantly increased access to markets that represent approximately 85 percent of world trade. U.S. tariffs would be reduced by slightly more than one-third, with a matching reduction in U.S. trading partners' tariffs.[12]

The primary provisions of the market access for industrial goods agreement consist of several components. Tariffs would be eliminated or significantly reduced in certain sectors[13] in developed industrial markets

[11]The Uruguay Round Protocol to the General Agreement on Tariffs and Trade 1994 contained in the UR Agreement lays out how the GATT signatories will add their new tariff schedules reflecting all negotiated tariff concessions to GATT and how they are to implement those schedules.

[12]In line with GATT procedures, tariff cuts were calculated on the basis of an agreed-upon base year. For the United States, the base year was 1989; for most other countries, it was 1988.

[13]Sectors in which tariffs would be eliminated or significantly reduced include construction equipment, agricultural equipment, medical equipment, steel, beer, distilled spirits, pharmaceuticals, paper, toys, and furniture.

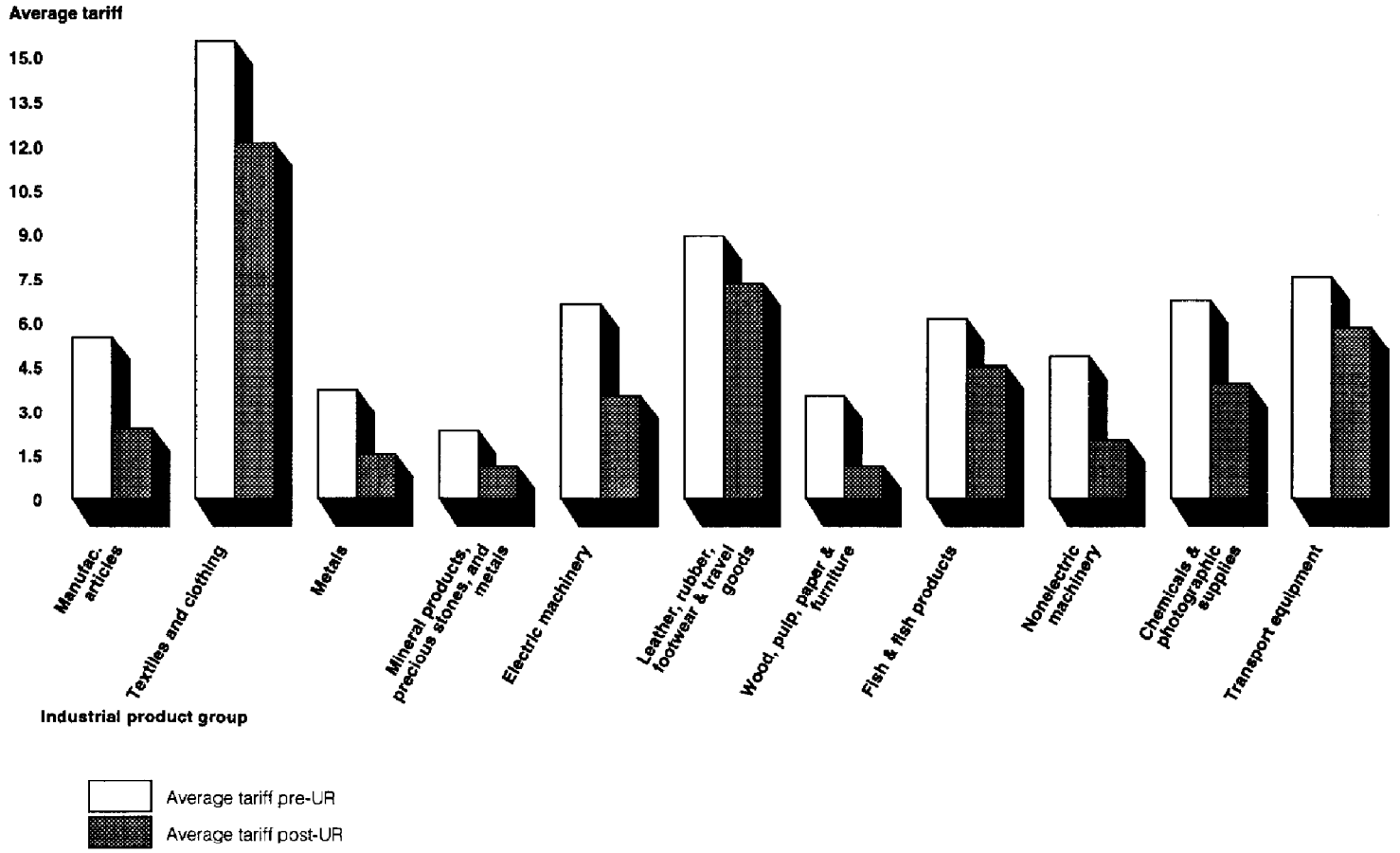
and significantly reduced or eliminated in many major developing markets. For example, the U.S. cut in tariffs on electronic items would be 81 percent, while U.S. trading partners agreed to make cuts from 50 to 100 percent in electronics items (including semiconductors, computer parts, and semiconductor manufacturing equipment). Developed and major developing countries[14] agreed to harmonize tariff rates in the chemicals sector at low rates (0, 5.5, and 6.5 percent). In addition, agreement for a 65 percent cut in scientific equipment tariffs was reached by major U.S. trading partners, including the EU, Japan, EFTA,[15] South Korea, and Malaysia.

According to the GATT Secretariat, tariff reductions will average 38 percent for developed economies, which currently constitute about two-thirds of world imports of industrial products other than petroleum products, bringing average tariffs down from 6.3 percent before the UR to 3.9 percent. Figure 2.1 shows average tariff rates before and after the Uruguay Round for 11 product categories.

[14]Countries which would harmonize their tariff rates in the chemical sector included the EU, Japan, the European Free Trade Association (EFTA - see fn. 15), South Korea, Singapore, the Czech Republic, the Slovak Republic, and Malaysia (partial participation).

[15]EFTA is a regional trade group established in 1958 by the Treaty of Stockholm and originally comprised of Denmark, Sweden, Norway, the United Kingdom, Austria, Portugal, Switzerland, Finland, and Iceland. The United Kingdom, Portugal, and Denmark have since left EFTA to join the EU. Other EFTA members are also negotiating to join the EU. EFTA has mainly been concerned with the elimination of tariffs with respect to manufactured goods originating in the EFTA countries and traded among them.

Figure 2.1: Tariff Reductions of Developed Countries by Industrial Product Group (Excluding Petroleum Products)



Note: Developed economies include the OECD countries. Transition economies include the central and eastern European countries, non-European successor states of the former Soviet Union, and Mongolia. Developing economies include all of the remaining GATT member countries.

Source: GATT Secretariat.

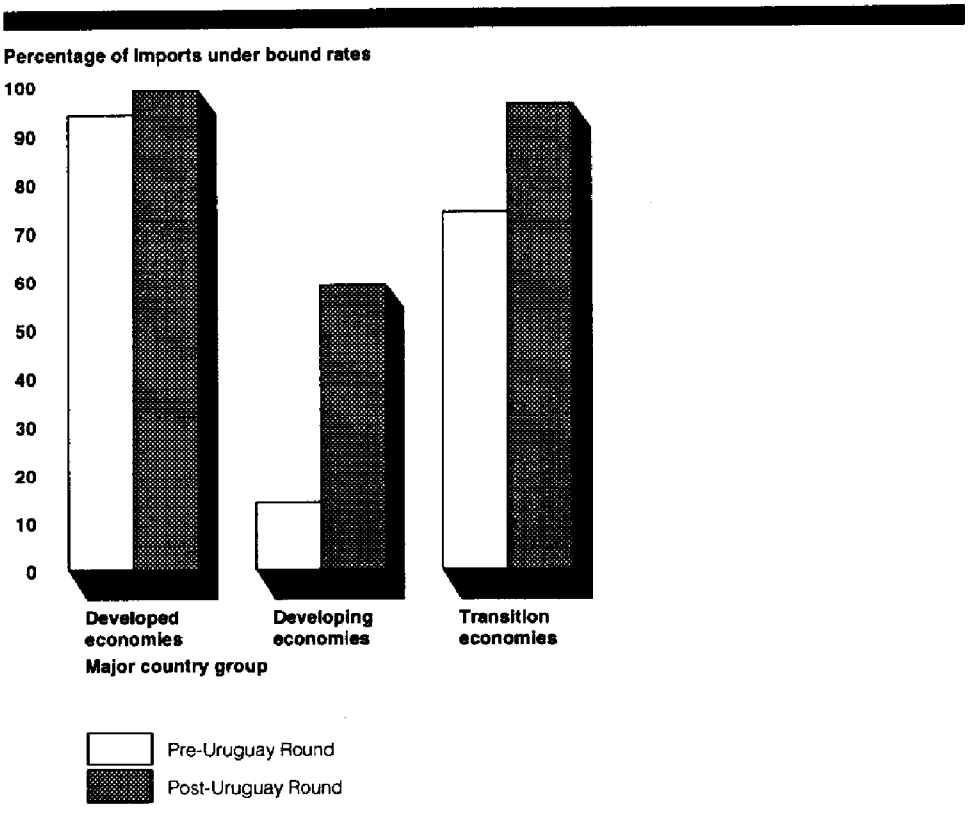
Generally, most tariff reductions would be implemented in equal annual increments over 5 years. Some tariffs, particularly in sectors where duties would fall to zero, would be eliminated when the agreement enters into force (expected to be January 1995). Other tariffs, such as in sensitive

sectors for the United States, would be phased in over a period of up to 10 years.

Another important aspect of the agreement would be the substantial increase in tariff bindings. USTR maintains that the vastly increased scope of bindings at reasonable levels from developing countries would ensure predictability and certainty for traders in determining the amount of duty that would be assessed. The GATT Secretariat concludes that a major result of the Uruguay Round would be an improvement in the security of market access in industrial products through tariff bindings.

Figure 2.2 shows the percentage of imports under bound tariff rates before the Uruguay Round and the percentage that would be bound after the Uruguay Round for three country groups. The percentage of imports under bound rates has risen pre-Uruguay Round to post-Uruguay Round from 94 percent to 99 percent for developed economies, from 14 percent to 59 percent for developing economies, and from 74 percent to 96 percent for transition economies. Although the level of tariff bindings is lower for developing and transition economies, the increase in coverage would be most substantial for this group, where the initial level of bindings was low. It should be noted, however, that reductions in bound tariff rates for developing economies or regions would refer in many instances to reductions in "ceiling" rates, which often exceed actual rates currently applied to imports.

Figure 2.2: Pre- and Post-Uruguay Round Scope of Bindings for Industrial Products (Excluding Petroleum)



Source: GATT Secretariat.

Potential Impact of the Agreement

According to USTR, by reducing barriers to global trade, the Uruguay Round would enhance U.S. economic efficiency. Job creation and capital investment would be further encouraged in the export-producing sectors of the U.S. economy. USTR also maintains that import growth from the UR would benefit the U.S. economy by keeping prices low and broadening consumer choice. Expanded U.S. trade would boost average real wages, spending power, living standards, and economic competitiveness. Finally, according to USTR, reduced barriers to trade and other provisions in the Uruguay Round would expand investment opportunities in the United States. In the following section, we describe the results of two studies that estimate the projected economic gains of increased market access under the Uruguay Round agreement, and we provide some examples of the market access agreement's impact on U.S. industry as projected by the Department of Commerce.

Two Studies' Conclusions

USTR, working with the Council of Economic Advisers (CEA) and using the results from an Australian study,[16] concluded that total economic gains for the United States due to a one-third cut in tariff and nontariff world trade barriers would be about $219 billion (in 1989 dollars) in the year 2000.[17] The $219 billion is equivalent to a gain of 3 percent in the U.S. gross national product (GNP) for that year. The one-third cut is assumed to be phased in over the 10-year period from 1991 to the year 2000. The gains to U.S. GNP in the USTR/CEA study take into account both static[18] and dynamic gains.[19] Of the 3 percent gain in U.S. GNP in the year 2000, approximately 2 percent would be dynamic gain, while 1 percent would be static gain. The USTR/CEA's estimate is the only one in our review attempting to estimate dynamic economic gains for the Uruguay Round. These dynamic gains are still not well understood and cannot be easily estimated. This study did not take into account trade liberalization in services and general rules changes from the UR.

In a separate 1994 study by the GATT Secretariat,[20] estimates prepared on the basis of partial data suggested that the overall trade impact of the Uruguay Round could mean that the world's merchandise trade would reach a level roughly $755 billion higher by the year 2005 (at 1992 prices) than would otherwise have occurred without the market openings agreed to in the Uruguay Round. The GATT Secretariat study projected the largest increases in trade would come in the areas of textiles and clothing, agriculture, forestry and fishery products, and processed food and beverages. This study may have underestimated the potential gains of the market access agreement. Although the analysis took into account

[16]Andrew Stoeckel et al., Western Trade Blocs: Game Set or Match for Asia-pacific and the World Economy? (Canberra, Australia: Centre for International Economics, 1990).

[17]The February 1994 Economic Report of the President provided a more conservative estimate, stating that the total gain 10 years after implementation of the agreement begins will likely be within a range of more than $100 billion but less than $200 billion.

[18]Static gains from trade stem from the increased efficiency of resource allocation and improved consumption possibilities. Additional gains from trade may result from increasing returns to scale, and from increased product and input variety for consumers and producers respectively. Static gains imply a change in the amount of aggregate output but not in its growth rate. Therefore, static gains from trade are relatively small as a percent of gross domestic product (GDP) in empirical studies of trade liberalization.

[19]Dynamic gains from trade increase the rate of economic growth. Even a small change in the growth rate can have a substantial cumulative effect on GDP. Thus, empirical assessment of the dynamic effects of trade policy changes can yield substantially larger estimates than those based on static models. The growth effects of trade liberalization can flow through a variety of channels, such as improved access to specialized capital goods, enhanced human-capital accumulation, increased learning by doing, better transfer of skills, and new product introduction.

[20]GATT Secretariat, An Analysis of the Proposed Uruguay Round Agreement, with Particular Emphasis on Aspects of Interest to Developing Economies (Geneva: Nov. 29, 1993).

important repercussions of the tariff reductions across the sectors and through world trade and income, it did not capture the dynamic gains. Like the USTR/CEA study, it did not reflect the expansion in trade in services or the effect of changing rules and procedures.

The Department of Commerce Predictions

In addition to the two studies' estimates, the Department of Commerce[21] projects that the market access agreement would create potential opportunities for U.S. industry. According to the department, some examples include the following:

- With the EU's nearly 80 percent reduction in tariffs, the opportunies for U.S. computer exports to the EU, already the largest market for these U.S. exports, should increase. In 1993, exports of computer equipment to the EU exceeded $10 billion and accounted for 38 percent of U.S. exports of computer equipment worldwide.
- The virtual elimination of developed country tariffs on medical equipment, including those in the largest U.S. export markets, should raise these U.S. exports by $200 million-$300 million annually over the next several years, according to industry experts.
- The tariff elimination for paper and allied products over a 10-year period would lead to a $2 billion increase per year in exports of U.S. paper and allied products, according to U.S. industry estimates.
- Japan's 24.5 percent cut in fish duties would include all major fishery items of U.S. interest and would cover over $2 billion of U.S. exports.

Issues to Watch

According to USTR, the GATT market access negotiations concluded with the signing of the final act embodying the results of the Uruguay Round. Any future tariff reduction negotiations would be done on a bilateral basis or if countries declare another round of multilateral negotiations. Any monitoring would involve ensuring that tariff concessions made under the market access agreement are honored and that further tariff reductions, where needed, are facilitated through bilateral means. According to USTR, possible areas of future U.S. negotiations might include, but are not limited to, achieving zero-for-zero tariff levels with Japan for white spirits and wood products and negotiating with more countries to reduce tariffs in the chemical sector.

[21]Uruguay Round, Opportunities for U.S. Industries, Uruguay Round Industry Sector Hightlights, U.S. Department of Commerce, International Trade Administration (Washington, D.C.).

Institutional Changes From the Uruguay Round: Creation of WTO and Strengthened Dispute Settlement Procedures

With the creation of WTO, member countries would, for the first time, have a formal organization through which they could administer the multilateral trading system. The creation of WTO would likely strengthen the currently fragmented GATT organizational structure. However, there is disagreement over the new WTO decision-making procedures, which some experts believe may be used in ways detrimental to U.S. interests. There is also disagreement over the strengthened procedures for settling disputes, which some experts say may restrict U.S. ability to conduct international trade policy and implement domestic policies that affect trade.

Concerns With GATT Organizational Structure and Functioning

Since January 1948, when GATT came into force, the signatories have, by necessity, developed a provisional institutional structure for administering the agreements. This structure has several units that, working together, exhibit many of the attributes and functions of an international organization. Yet, several members believed that, as multilateral trade negotiations addressed increasingly complex and sensitive areas (e.g., agriculture, textiles, trade-related intellectual property rights, and services), GATT would need a stronger organizational structure and improved decision-making and dispute settlement procedures.

GATT Organizational Structure

Strengthening GATT's organizational structure required addressing two problems resulting from the Tokyo Round negotiations, which concluded in 1979. While all GATT members belong to the general agreement, they are not required to adhere to all the codes resulting from the Tokyo Round negotiations. Instead, they could select only those codes to which they wished to adhere. Since each code is viewed as being separate and distinct from the others, this process resulted in organizational fragmentation which, in turn, caused two major problems.

1. The "free rider" problem. Due to the GATT's MFN requirements, member countries that adhere to a given code and provide concessions in accordance with its obligations are required to accord the same benefits to all GATT members,[1] including those countries that did not adhere to the code and, thus, do not reciprocate.

[1]With the exception of the four "plurilateral" agreements, which include the Agreement on Trade in Civil Aircraft, the Agreement on Government Procurement, the International Dairy Arrangement, and the Arrangement Regarding Bovine Meat.

2. The inability to "cross-retaliate."[2] When a GATT member country is authorized to impose sanctions against another member for violating its obligations under a given code, it may only suspend concessions provided under that code. This restriction limits the plaintiff country's options and may make it difficult for that country to devise a sanction that is effective.

Members also believed that the GATT organizational structure needed to (1) improve coordination with other multilateral organizations that influence the world economy, such as the World Bank and IMF; and (2) develop a capacity to survey signatory countries' international trade policies and practices and report on areas where improvements might be needed.

GATT Decision-Making Mechanisms

The GATT contracting parties—the only institution provided for in the agreement—has sole decision-making authority. This unit is made up of representatives from GATT signatory countries, assembled either at the ministerial level or, with lower-level officials, in the GATT council. It has exclusive authority to legislate, render judgments on the conformity of trade policies with GATT obligations, and waive members' rights and obligations. Contracting parties' decisions are made by consensus or, unless specifically provided otherwise, by a better than 50 percent majority of the votes cast, with each member country having one vote.

All other GATT organizations exist and are empowered solely by delegations of authority from the contracting parties. These include the GATT Secretariat, which provides technical support to other GATT units; the Council of Representatives, which performs several functions delegated by the contracting parties; working parties, groups of GATT member countries that study important issues as they arise; and various committees arranged along functional lines. Among the latter are the multilateral trade negotiations "code" committees that administer the various agreements (or codes) resulting from the Tokyo Round negotiations. According to Terence Stewart, a trade attorney, the committees and working parties play a very important role in administering the GATT agreements. He adds

[2]The Agreement on Interpretation and Application of articles 6, 16, and 23 of the General Agreement on Tariffs and Trade (the subsidies and countervailing duties code) is an exception. Throughout this volume, articles of the original 1947 GATT agreement and subsequent rounds through the Kennedy Round are identified by Roman numerals, and the articles of the Tokyo and UR agreements are identified by Arabic numerals.

that "a large part of the negotiations and conciliations of national interests occurs at the level of the committees and working parties."[3]

According to USTR officials, the United States supports the GATT practice of making major decisions affecting all members by consensus. Consensus is reached through a process of negotiation and compromise, with the tacit understanding that agreement from countries with economic influence (e.g., the United States, the EU, and Japan) is important and often necessary. If a compromise cannot be reached, the contracting parties simply continue discussions until the positions of the members begin to coalesce, making agreement possible. Although voting procedures are not used, a USTR official said that the possibility of a vote underlying all deliberations persuades members, who are reluctant to risk losing a vote, to seek compromise.

Some trade experts had raised concerns that, because of the need for consensus, GATT member countries depend heavily on extended multilateral negotiating "rounds" to address problems in the world's trading system. In these rounds, GATT members seek to settle differences regarding the interpretation of agreements, amend and expand agreements, and extend coverage of GATT to new areas in international trade. These rounds permit decision-making by consensus because participant countries can "trade off" their positions on various issues. That is, a country would seek to obtain acceptance for its primary negotiating objectives in exchange for agreeing to accept another country's priority negotiating objectives in an area of less importance to the first country. These negotiations, involving scores of countries and varied negotiating topics, became lengthy and expensive. For example, the Uruguay Round negotiations took 7-1/2 years to complete and involved 125 countries negotiating 21 agreements, a protocol, and numerous ministerial decisions and declarations.

GATT Dispute Settlement Procedures

The GATT dispute settlement mechanism aims to preserve the rights and obligations of the GATT member countries and to clarify the existing provisions of the agreements. Requirements in effect at the beginning of the UR negotiations stated that signatory countries first seek to resolve differences through consultation and, only after consultation has failed, initiate dispute settlement procedures.

[3]The GATT Uruguay Round: A Negotiating History (1986-1992) Volume II: Commentary, ed. Terence P. Stewart (Cambridge, MA: Kluwer Law and Taxation Publishers, 1993), p. 190.

As we previously reported, these procedures were seen as being cumbersome and time-consuming,[4] and they gave participants numerous opportunities for delay. To initiate these procedures, the GATT council needed to make a consensus decision to create a panel of experts from signatory countries.[5] The panel was authorized to conduct an investigation and make a "ruling," which outlined the facts of the case and presented the panel's conclusions and, where appropriate, recommendations for bringing a member's policies into conformity with its GATT obligations. For the ruling to have force and effect, the GATT council (or relevant "code" committee in the case of disputes involving the Tokyo Round agreements), has to make a consensus decision to accept it. A consensus decision by the GATT council (or "code" committee) was also required to authorize a member country to impose sanctions against another country unwilling to implement a panel decision.

While a complex pattern of GATT traditions and understandings seeks to discourage members from obstructing dispute settlement procedures for long periods, member countries have nonetheless done so for months and, in some instances, years. For instance, a country could refuse to permit formation of a panel, continually reject panelists, or delay the collection of information requested by the panel. At each step in the process, defendants could obstruct simply to buy time or to exact some legal or procedural concession in advance. Even after panel decisions have been adopted, member countries have delayed full implementation of panel recommendations.

A country truly intent on avoiding a panel decision that, for domestic reasons, would be difficult to implement could effectively "block" adoption of the panel report by voting against it each time it came before the GATT council. According to Professor Robert Hudec,[6] of the 57 legal rulings issued by GATT panels between 1975 and 1989, one can identify at least 17 cases in which the power to block adoption of a panel ruling was used in a significant way. In three cases, the blockage was ultimately supported by the rest of the GATT membership, and the ruling was set aside. In six cases, adoption of the ruling was blocked for several months

[4]See International Trade: Combating Unfair Foreign Trade Practices (GAO/NSIAD-87-100, Mar. 17, 1987), and The International Agreement on Government Procurement: An Assessment of Its Commercial Value and U.S. Government Implementation (GAO/NSIAD-84-117, July 16, 1984).

[5]According to a USTR official, since the Montreal midterm ministerial meeting in December 1988, the decision to establish a dispute settlement panel is automatic and no longer requires consensus.

[6]Robert E. Hudec, "Dispute Settlement," in Completing the Uruguay Round: A Results-Oriented Approach to the GATT Trade Negotiations, ed. Jeffrey J. Schott (Washington, D.C.: Institute for International Economics, 1988), pp. 183-4.

or more before it ultimately was accepted. In eight cases, adoption of the ruling was continually blocked, usually with some support from other countries; in most of these cases, the dispute was eventually settled, even though the ruling itself was not accepted.

These problems have placed strains on the functioning of GATT. On September 26, 1985,[7] we testified that "[t]he continued existence of unresolved disputes challenges not only the principles of the GATT but also the value of the system itself." We further stated that member countries lacked faith in their ability to resolve disputes using GATT mechanisms and, as a result, "[took] unilateral actions that violated the central non-discrimination principle of the GATT" and "participat[ed] in bilateral understandings" that weakened the multilateral trading system.

U.S. Negotiating Objectives

The United States established its objectives for the UR negotiations on institutional issues in three stages: initially, with other GATT members, through the 1986 Punta del Este ministerial declaration and, subsequently, through the Omnibus Trade and Competitiveness Act of 1988 and the U.S. response to the Dunkel text.

1986 Ministerial Declaration

The United States joined with the other GATT member countries at the GATT ministerial conference in Punta del Este, Uruguay, to establish the negotiating framework for the upcoming round of negotiations. They jointly set broad objectives for each area of negotiation and delegated responsibility for meeting these objectives to various negotiating groups. The ministerial declaration, containing the results of these deliberations, identified two sets of negotiating objectives with regard to the functioning of the GATT organizational structure.

1. The declaration directed the Functioning of the GATT System (FOGS) negotiating group to develop agreements that would

- increase the contribution of GATT to achieving greater coherence in global economic policy-making through strengthening its relationship with other international organizations responsible for monetary and financial matters;

[7]See United States Participation in the Multilateral Trading System, statement of Allan I. Mendelowitz, Associate Director, National Security and International Affairs Division, before the Subcommittee on International Economic Policy, Oceans and Environment, Senate Committee on Foreign Relations.

- enhance the surveillance under GATT to enable regular monitoring of trade policies and practices of contracting parties and their effect on the functioning of the multilateral trading system; and
- improve the overall effectiveness and decision-making of GATT as an institution through, among other things, enhancing involvement of ministers.

2. The declaration also directed that the dispute settlement negotiating group, in order to ensure prompt and effective resolution of disputes to the benefit of all contracting parties, should

- aim to improve and strengthen the rules and the procedures of the dispute settlement process and
- include adequate arrangements for overseeing and monitoring the procedures that would facilitate compliance with adopted recommendations.

1988 Omnibus Trade Act

During the early stages of the negotiations, Congress passed the Omnibus Trade and Competitiveness Act of 1988 which, among other things, formally established broad U.S. negotiating objectives for the Uruguay Round. This legislation identified U.S. objectives for improving GATT structure and mechanisms as (1) enhancing coordination between GATT and multilateral monetary institutions and (2) increasing the transparency (openness) of decision-making. It also identified U.S. negotiating objectives with respect to dispute settlement as developing more effective and expeditious dispute settlement mechanisms and procedures that permit better resolution of disputes and enable better enforcement of U.S. rights.

With the 1988 trade act, Congress also strengthened Section 301 of the Trade Act of 1974, as amended (19 U.S.C. 2411) and enacted additional authorities for addressing unfair foreign trade practices. Section 301 serves as the U.S. government's principal mechanism for addressing unfair foreign trade practices. It gives USTR broad authority to enforce U.S. rights under bilateral and multilateral trade agreements and to seek to eliminate certain acts, policies, or practices of foreign governments that burden or restrict U.S. commerce.

The United States had experienced frustration using Section 301 to address GATT-related trade issues. Using this trade remedy, the United States employs GATT dispute settlement procedures to address trade issues

related to GATT obligations. In a March 1987 report,[8] we found that "use of section 301 had limited success in achieving the removal of unfair foreign trade practices," largely because the process had been very lengthy, "particularly where complaints must also go through the GATT dispute settlement process . . . ." Reflecting this frustration, Congress amended Section 301 and enacted additional legislation that made it politically more difficult for the administration not to act forcefully to address objectionable foreign trade practices that injure U.S. interests. According to Hudec, the new law's message was:

> Congress had lost patience with the inefficacy of GATT rules and legal remedies, and had turned to threats of trade retaliation to protect what is regarded as legitimate U.S. economic interests.[9]

Response to the Dunkel Text

Toward the latter stages of the UR negotiations, the United States also formulated a response to the 1991 Dunkel text—a draft UR agreement that represented an effort by then GATT Director General Dunkel to maintain momentum in the negotiations that had been ongoing for 5 years. The draft agreement contained provisions for creation of a new international trade organization. It also sought to substantially change GATT dispute settlement procedures.

The United States was at first ambivalent toward the Dunkel text's proposal for a new international trade organization. In response, U.S. negotiators submitted for consideration a UR protocol to GATT that would have established a multilateral organizational structure, but would not have endowed it with an independent legal standing. The United States continued work on this document until the end of the negotiations. It ultimately agreed to support a new organization after having worked to include in its charter improved decision-making procedures, such as several procedural safeguards, a trade policy review mechanism, and improved coordination with other multilateral institutions.

The U.S. reaction to the Dunkel text's proposed dispute settlement procedures was largely positive. The draft agreement contained provisions reflecting major U.S. negotiating objectives. Notably, the draft agreement sought to establish time limits for each step in the dispute settlement process and effectively eliminate the ability to block adoption of panel reports. U.S. negotiators continued to work, however, to improve

[8]See GAO/NSIAD-87-100.

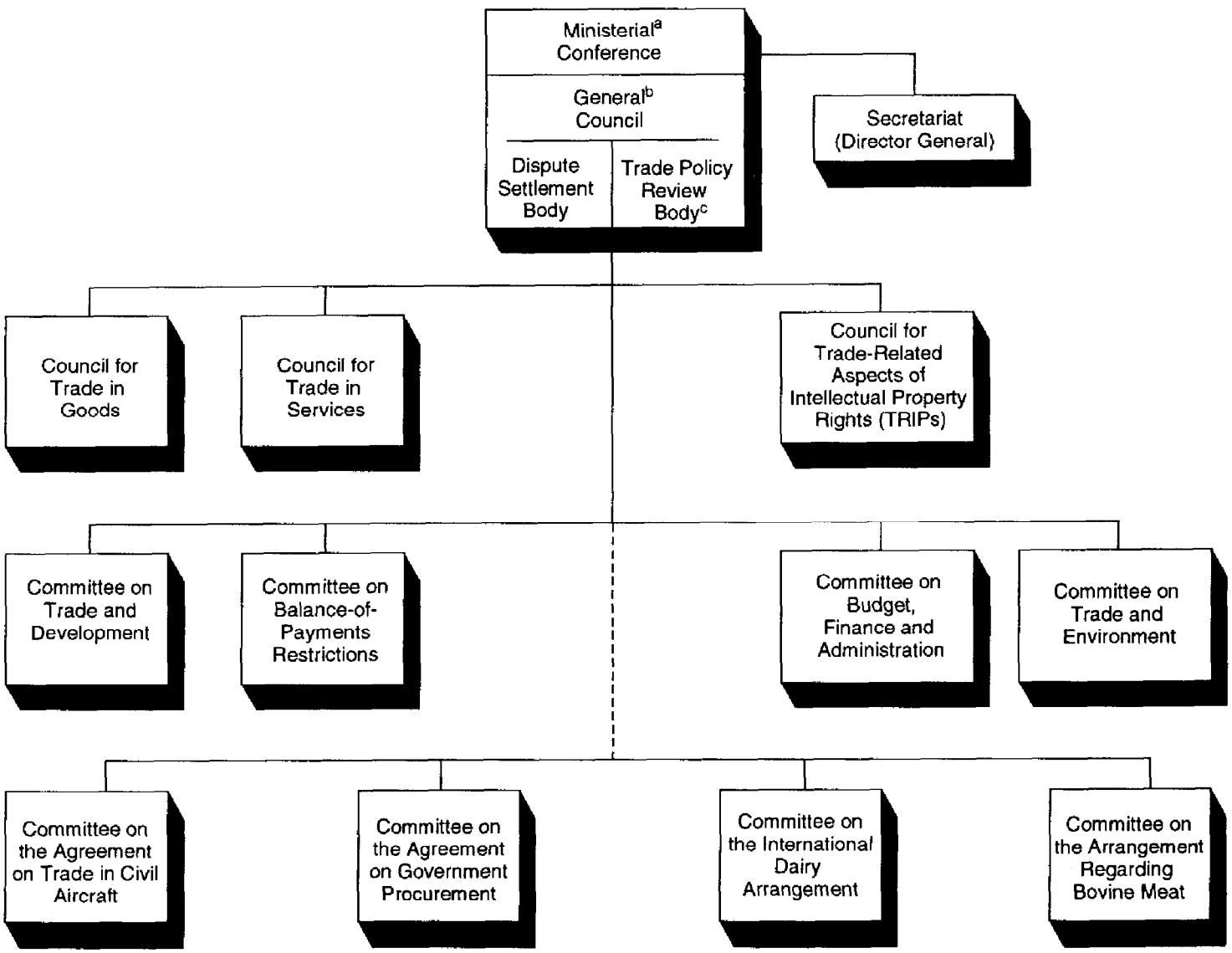
[9]Hudec, "Dispute Settlement," p. 186.

provisions affecting the transparency of the dispute settlement process and the "standard of review"; that is, the scope of dispute settlement panel reviews of member practices.

Results of the Uruguay Round

The April 1994 Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations contained a charter for the creation of WTO to replace the provisional GATT organizational structure. WTO would largely adopt GATT decision-making procedures. However, it would create within WTO a new Dispute Settlement Body, which would be comprised of representatives of the members, with substantially revised rules for administering the settlement of disputes.

Figure 3.1: WTO Organization Chart



----- The four committees provided for in the plurilateral trade agreements do not report to the General Council, but are required to keep the General Council informed of their activities. However, their members use the WTO dispute settlement mechanism and are subject to the decisions of the Dispute Settlement Body.

Note: Compiled largely from articles 4 and 6 of the Agreement Establishing the World Trade Organization.

[a]The Ministerial Conference would meet at least once every 2 years, and the General Council would convene as appropriate during the intervals between Ministerial Conference meetings.

[b]The General Council would convene as the Dispute Settlement Body and Trade Policy Review Body. Each organization, however, would select its own chairperson and establish rules of procedure.

[c]The Trade Policy Review Body would not have authority to make substantive decisions that apply to the WTO members.

WTO Structure

The Agreement Establishing the World Trade Organization would, for the first time, create a formal organization encompassing all GATT disciplines. WTO membership would be open only to countries that agree to adhere to all of the UR agreements[10] (adherence to the four "plurilateral" agreements would not be mandatory), and submit schedules of market access commitments for industrial goods, agricultural goods, and services. As such, this agreement would resolve the "free rider" problem and permit members to "cross-retaliate" by suspending concessions under any of these agreements when authorized to impose sanctions.

The agreement also makes provision for improved cooperation with other multilateral organizations with responsibilities and concerns similar to WTO, such as the World Bank and IMF, as well as the Organization for Economic Cooperation and Development. It also would establish within WTO a Trade Policy Review Body comprised of the members. This review body would examine, on a regular basis, national trade policies and other economic policies affecting the international trading environment.

WTO Decision-Making Mechanisms

The WTO agreement also would establish a Ministerial Conference, composed of representatives of all the members, that would govern the organization. The conference would be required to meet at least once every 2 years. In the interim, a General Council, also composed of representatives of all the members, would govern by its own actions and through a web of bodies, councils, and committees. The WTO agreement also provides for creation of a Secretariat with functions and responsibilities to be approved by the General Council.

[10]In the United States, these agreements are not "self-executing." They do not become part of U.S. law when the United States formally adheres to the agreements. Instead, the Omnibus Trade and Competitiveness Act of 1988 requires that agreements enter into force with respect to the United States "if (and only if)" the appropriate implementing legislation is approved by both Houses of Congress. Even after approval by Congress, U.S. law (19 U.S.C. 2504 (a) and (d)) provides that such agreements do not override domestic law in the event of a conflict, or create any "private right of action or remedy" unless specifically provided for in legislation. In contrast, in the EU, the UR agreements are "self-executing" and take precedence over national laws.

Under the WTO agreement, the Ministerial Conference and General Council would have exclusive authority to make decisions affecting the rights and obligations of members. They would use decision-making procedures that are generally similar to those in the original 1947 GATT agreement but, in some ways, more exacting. For example, the WTO agreement, for the first time, would expressly require members to attempt to reach decisions by consensus before invoking voting procedures. Further, when voting procedures are used, the WTO agreement would require majorities that are sometimes larger than those required under the 1947 GATT agreement. With each member country having one vote, the following is specified:

1. The Ministerial Conference and General Council would have exclusive authority to adopt authoritative interpretations of the UR agreements (provided that members cannot invoke these provisions to amend the agreements).[11] If consensus cannot be reached, these bodies may adopt an authoritative interpretation that would apply to all members by a three-fourths majority vote of all the members.

2. Only the Ministerial Conference or General Council would have authority to amend provisions of the UR agreements. According to USTR, amendment procedures are detailed and consist of at least two stages in each case. In the first stage, members decide whether to transmit a proposed amendment to their governments for ratification; such action would require a two-thirds majority vote of all the members. Unless the amendment affects a "core" provision of the UR agreements (i.e., the most-favored-nation, decision-making, and amendment provisions, and the dispute settlement understanding), the members must also decide whether it is procedural or substantive. An amendment is considered to be substantive unless it is designated to be procedural by a three-fourths majority vote of all the members.

In the second stage, the member countries decide whether to ratify the amendment. Amendments to core provisions of the Uruguay Round agreements would enter into force only if accepted by all members. A procedural amendment would enter into force for all members[12] if two-thirds of the members ratify it. An amendment affecting the substantive rights and obligations of members would also enter into force

[11]The WTO agreement clarifies that the reports of dispute settlement panels, while applicable to the disputants (subject to appeal), do not serve as authoritative interpretations of the relevant agreements.

[12]According to USTR, amendments to procedural provisions of the Uruguay Round would be binding on all WTO members in order to avoid the destabilizing effect that would result if different members were subject to different procedural rules.

after two-thirds of the members ratify it, but would apply only to those countries that had accepted it. The Ministerial Conference, by a three-fourths majority vote of all the members, may require members to accept amendments they did not support, withdraw from WTO or, with the consent of the Ministerial Conference, remain a member without accepting the amendment.

3. Only the Ministerial Conference or General Council would have authority to waive an obligation imposed on a member by a UR agreement. If a country has not implemented an obligation subject to a transition period (such as the provision of patent protection under the Trade-Related Intellectual Property Rights (TRIPs) agreement—see ch. 5) a waiver can be granted only by consensus. In other cases, where consensus cannot be reached, a waiver can be granted by a three-fourths majority vote of all the members.

WTO Dispute Settlement Procedures

The Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes would create a new dispute settlement mechanism that would add maximum time limits and "automaticity" (i.e., procedures that automatically progress to the next stage) to GATT dispute settlement procedures.

1. The new procedures for the initial portion of the dispute settlement process would include (1) the right to prompt creation of a panel; (2) the rejection of panel members only for "compelling reasons"; (3) the automatic adoption of panel reports, unless there is consensus against adoption (i.e., decision by "negative consensus" rules); (4) a new appeals process through which a WTO appellate body would have authority to review and revise panel decisions; and (5) the automatic adoption of appellate reports under negative consensus rules if there is an appeal.

2. Once the report has been adopted, the new procedures provide for (1) time limits for when a member should bring its laws and practices into conformity with panel rulings and recommendations; (2) surveillance of the implementation of panel report recommendations; (3) automatic approval, using negative consensus rules, for imposition of sanctions (including cross-retaliation) if the member does not conform to the panel recommendations or provide compensatory trade benefits within an appropriate period of time; and (4) expeditious arbitration of any disagreement about the amount or duration of sanctions or the reasonable

period of time given the defendant to conform to the panel report recommendations.

The understanding also addresses the transparency of the dispute settlement process and the standard of review used by panels. To improve transparency, parties to a dispute would be required upon request by a member to provide nonconfidential summaries of their panel submissions that could be given to the public. Parties also would have authority to disclose to the public their submissions and positions in their entirety at any time. Under the standard of review provisions, WTO panels would generally maintain authority to conduct broad investigations of members' practices and procedures, including both specific uses or applications of domestic laws and the conformity of laws themselves with WTO obligations. An exception involves reviews of members' antidumping procedures;[13] in such cases, panels would use a standard of review that acknowledges that there may be more than one permissible interpretation of the agreement or the facts, and requires panels to defer to permissible interpretations by WTO members.

Potential Impact of the Agreements

Trade experts expect the UR agreements to create a stronger institutional structure for administering multilateral trading relations. Supporters of the UR agreements also believe that they will strengthen the GATT's decision-making mechanisms and dispute settlement procedures. Still, certain international trade attorneys and other trade experts we consulted raised concerns that other countries may be able to use the new WTO (1) decision-making procedures in a manner detrimental to U.S. interests and (2) dispute settlement procedures to reduce the effectiveness of U.S. unilateral trade efforts and subject U.S. laws to unwanted foreign interference.

WTO Structure

The United States would likely benefit from the replacement of the provisional GATT institutional structure with the new WTO. The United States, which adhered to all but one of the Tokyo Round codes,[14] would benefit from the elimination of the free rider problem. Under the UR agreements, it would no longer have to provide trade concessions to other countries that do not reciprocate. The United States, as a user of dispute

[13]Department of Commerce officials interpret a UR ministerial declaration as supporting the idea that dispute settlement panels would use the same standard of review for cases involving both countervailing duty procedures and antidumping procedures.

[14]The United States is not a signatory to the Tokyo Round Agreement on Dairy Products.

settlement procedures, would also benefit from the potential for cross-retaliation. Where sanctions are authorized, the United States would no longer be limited to suspending concessions within the GATT agreement that was violated, but would have the authority to fashion a sanction from other UR agreements.

While USTR advisory groups expressed overall support for creation of WTO, certain groups raised concerns about its potential operation. These groups said they are concerned that the WTO bureaucracy may grow to become a factor in international trade relations separate and distinct from the WTO members. They urged the administration to guard against such a development. Administration officials said that the United States sees this occurrence as highly unlikely but, nevertheless, will act on this advice as appropriate.

WTO Decision-Making Mechanisms

There was disagreement among the trade experts we consulted regarding whether U.S. ability to pursue its interests within the multilateral trading system would remain unabated under the new WTO decision-making procedures. Despite the detailed voting procedures, USTR officials believe that the United States would be able, as in the past, to pursue its interests within the multilateral trading system by building consensus in support of U.S. positions. The National Association of Manufacturers believes that the WTO agreement may even enhance U.S. efforts by ". . . provid[ing] a process of amending GATT that may be less cumbersome than the current system of negotiating rounds."[15]

Certain international trade attorneys and other trade experts have nonetheless expressed concern that blocs of WTO members—particularly developing countries—may employ the new voting procedures in a manner contrary to U.S. interests. They point out that developing countries may represent as much as 80 percent of the WTO membership. While they are signatory to the 1947 GATT agreement, these countries generally adhere to few of the GATT Tokyo Round agreements and, as a result, are not members of the code committees that administer those agreements. As such, the requirement that all WTO members adhere to all nonplurilateral UR agreements could substantially expand the influence, as well as obligations, of developing countries in WTO. Certain commentators believe that, by virtue of their numbers, these countries could use the

[15]Statement of the National Association of Manufacturers on the Uruguay Round of Multilateral Trade Negotiations (Washington, D.C.: Feb. 5, 1994), p. 1.

voting procedures to change the decision-making dynamic within the organization.

For example, in one scenario, a WTO member may propose that, under the UR agreements, member countries taking unilateral action on trade issues, whether or not specifically covered by the UR agreements, would be violating their obligations under the agreements. The United States would likely object. Unable to reach consensus on the issue, the other member may request a vote to establish an authoritative interpretation of the UR agreements on this matter. Given their shared interest in limiting U.S. use of Section 301, the developing countries, possibly with support of other countries, may be able to attain a three-fourths majority vote in support of the original proposition.

According to USTR officials, there is little likelihood of such an occurrence. Adequate safeguards have been built into the system to ensure against use of the voting procedures in this manner. In addition, other WTO members would be very reluctant to alienate the United States from the organization. USTR officials specifically point to the following:

1. The WTO agreement contains provisions to ensure that member countries cannot use the interpretation process to amend an agreement or expand or diminish the rights and obligations of members. If an interpretation should come to a vote, USTR officials said they are confident that, given the anticipated fluid nature of WTO deliberations, the United States could generate enough support to block adoption of any proposed interpretation that it opposed.

2. If an amendment lacking U.S. support is accepted by two-thirds of all the members, the United States would not be bound by the change. Under the WTO agreement, a second vote, resulting in a three-fourths majority, would be required to compel members to accept amendments they did not support. USTR believes it is highly unlikely that WTO would vote to compel the United States to adopt an amendment it did not support. Unable to reach an accommodation with the United States, WTO would risk losing it as a member. According to USTR officials, WTO members would be very reluctant to risk losing the country with the world's strongest economy and largest market, thus creating uncertainty and instability in the world trading system. They add that a similar 1947 GATT agreement provision, requiring only a greater than 50-percent majority vote, has never been invoked.

Having reviewed the available information, we believe that it would be difficult to predict the decision-making dynamic that would govern WTO deliberations. The WTO agreement seeks to ensure that the new organization continues the GATT practice of decision-making by consensus. In addition, U.S. negotiators endeavored to include in the WTO agreement safeguards against any misuse of voting procedures. Yet, several commentators have expressed concern that, despite these safeguards, blocs of countries with newfound authority may be able to use the voting procedures to affect the multilateral trading system in a manner detrimental to U.S. interests. Should Congress ratify the UR agreements, we believe WTO decision-making would warrant close oversight to ensure that U.S. interests are being served.

WTO Dispute Settlement Procedures

There was disagreement among the USTR advisory groups, international trade attorneys, and other experts we consulted regarding the Uruguay Round's dispute settlement procedures. Administration officials, along with several nongovernment experts, emphasized that these new procedures would strengthen the U.S. government's ability to remedy violations of UR obligations, which would be substantially expanded compared to present requirements under GATT. Others, while agreeing with this statement, expressed concerns that these procedures might also

- reduce the effectiveness of the U.S.' ability to unilaterally address nonviolation trade issues (i.e., trade practices that the United States considers to be unfair and harmful to U.S. interests but would not violate UR obligations) and
- permit WTO members to intrude upon U.S. government policy-making in areas considered outside international trade policy.

U.S. Use of WTO Dispute Settlement to Address Violations

USTR advisory groups, international trade attorneys, and other experts we consulted agreed that, under the new procedures, the United States would be in a stronger position to use WTO dispute settlement to address unfair foreign trade practices that violate UR agreements obligations. They pointed out that, under the UR agreements, these obligations would be substantially expanded, thus extending the reach of dispute settlement. The new time limits and automaticity procedures would appear to strengthen a plaintiff's ability to maintain the momentum of the dispute settlement process because of the following:

1. Where before defendants delayed procedures for months, the new understanding contains strict time constraints that limit the duration of

procedures to 18 months from the date the panel was established, even if there is an appeal.

2. Where before countries blocked adoption of panel reports for months, or even years, the new procedures call for acceptance of such reports unless there is consensus to reject.

The procedures also would require the Dispute Settlement Body to establish a reasonable period of time during which a member must pay compensation or bring its laws, regulations, or practices into conformity with panel rulings and recommendations. In the event of noncompliance with the panel's decision and a failure to provide compensation, the plaintiff would have an automatic right to retaliate, including the potential for cross-retaliation.

U.S. Unilateral Action Outside WTO Dispute Settlement

Certain USTR advisory groups, international trade attorneys, and other trade experts we consulted expressed concerns regarding the extent to which the United States, under the UR agreements, would maintain latitude to use Section 301 to unilaterally address nonviolation trade issues. At issue is whether the United States would be required by the UR agreements to resolve all trade-related disputes with WTO members using its dispute settlement mechanism, including those that do not involve violations of UR obligations. If so, while the United States would retain the capacity to act unilaterally, the new dispute settlement procedures would render threats of such action less credible and, thereby, reduce the leverage gained by the United States. Such threats, in the past, have been crucial to U.S. efforts to address nonviolation trade issues.

While substantially broader than GATT, the UR agreements would not address all trade practices that may be considered as unfair by the United States. U.S. trading partners would continue to have considerable latitude to restrict U.S. exports without violating WTO obligations. The UR agreements contain only limited obligations in several areas newly brought into or expanded under its disciplines. For example, WTO member countries would still have leeway to limit access to domestic markets in such areas as agriculture, certain services, and investment; and there are areas of intellectual property protection (e.g., details of the patent examination systems) that are not addressed by the TRIPs agreement. In addition, the UR agreements do not address several significant world trade issues, such as anticompetitive practices, that may unfairly restrict U.S. exports.

In response to these concerns, administration trade officials said that, under the UR agreements, the United States would maintain its current ability under GATT to unilaterally address nonviolation trade issues. This ability is based on article XXIII of the 1947 GATT agreement, which governs settlement of disputes among member countries. This provision does not prohibit members from using GATT dispute settlement procedures to address trade disputes. It states the following:

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 . . . the contracting party may . . . make written representations or proposals to the other contracting party or parties which it considers to be concerned.

2. [I]f no satisfactory adjustment is effected . . . the matter may be referred to the CONTRACTING PARTIES [which] shall promptly investigate any matter so referred to them and . . . give a ruling on the matter as appropriate. (Underscoring provided.)

According to USTR, these provisions have never been interpreted to require use of these procedures or prohibit outside action to address nonviolation issues.

Administration officials acknowledge, however, that the U.S. government, in taking unilateral action, must be careful not to impose sanctions that violate U.S. obligations, or are otherwise actionable, under the UR agreements. Use of such sanctions would violate U.S. obligations and give the offending country an opportunity to use the new WTO dispute settlement procedures to retaliate against the United States. Consequently, the U.S. government would need to employ other types of leverage. For example, certain industry groups have suggested that the United States could revoke tariff waivers granted under the Generalized System of Preferences (GSP)[16] as leverage with WTO member developing countries.

Consistent with its position during the negotiations, the EU appears to hold a contrary opinion on this matter. According to Stewart,[17] passage of the 1988 Omnibus Trade Act increased foreign opposition to U.S. unilateral action. Some GATT member countries saw the amendments to Section 301 and additional legislation as another example of the U.S.' "aggressive unilateralism" that put in question the commitment of the United States to

[16]GSP is a program under which the United States grants duty-free treatment on selected items to 144 designated developing countries and territories.

[17]Stewart, The GATT Uruguay Round, pp. 2760-3.

multilateralism and threatened the overall operation of GATT. The EU was particularly critical of these amendments and switched its negotiating position virtually 180 degrees—from one that objected to strengthening GATT dispute settlement to one that favored such changes, largely as a way to "rein in" U.S. unilateral action.

The EU's new strategy was to overcome unilateralism by insisting that WTO member governments commit not to use trade retaliation except as authorized through the WTO legal system. The EU appears to believe that the UR negotiations attained that goal. According to a European Commission discussion of the results of the UR negotiations,

> [t]he aim behind the WTO is that members agree to settle their trade disputes multilaterally through the WTO instead of bilaterally or even, in the case of Section 301 of the US Trade Act, unilaterally. . . . One of the central provisions of the agreement is that members shall not themselves make determination of violations, or suspend concessions, but shall make use of the new dispute settlement procedure.

The European Commission concluded that the United States can no longer "resort to . . . arbitrary provisions of the kind used to impose unilateral sanctions against its trading partners."[18]

The difference between the U.S. and EU positions centers on article 23 of the WTO dispute settlement understanding, which elaborates on and modifies the original article XXIII of the 1947 GATT agreement. According to the IPAC report on the UR agreements, ". . . article 23 [of the dispute settlement understanding] could be interpreted to mean that virtually any dispute must be resolved using the understanding's [dispute settlement] procedures." It states the following:

> 1. When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this understanding.
>
> 2. In such cases, Members shall (a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this understanding . . . (Underscoring added.)

[18]The Uruguay Round, European Commission Background Brief 20 (Mar. 14, 1994), pp. 4 and 14-5.

An EU official told us that he could think of no trade issue that would not fall into one of the categories listed in the first paragraph of this provision.

Certain international trade attorneys and other trade experts we consulted have raised the concern that, if the United States were indeed required to use WTO dispute settlement in all cases involving nonviolation trade issues, it could severely weaken the U.S.' likelihood of success. Trade experts with whom we spoke said that a WTO member would have little chance of winning "on the merits" a dispute settlement case that seeks to address nonviolation issues caused by the limited obligations of UR agreements. WTO dispute settlement panels would be prohibited from permitting plaintiffs to use dispute settlement to compel other member countries to strengthen their practices beyond what the agreements require.

In addition, according to a prominent trade attorney, article 26 of the WTO dispute settlement understanding contains special procedures for use in disputes involving nonviolation issues that appear to lessen the likelihood that plaintiffs would be successful. According to USTR, these procedures and requirements are the same as those in effect under the 1947 GATT agreement. Under these provisions the following would occur:

1. Defendants would not be obligated to withdraw nonviolation "measures" (i.e., specific government actions) that are found to reduce benefits to other members. Rather, the panel or appellate body could only recommend that the defendant make an adjustment that is "mutually satisfactory" to the disputants: this adjustment may include compensation. Thus, since a plaintiff could not seek the withdrawal of the nonviolation measure harming U.S. interests, efforts to assist a particular industry harmed by a foreign government measure could very well result in no assistance to that industry.

2. Defendants would be authorized to block acceptance of panel reports in cases involving nonviolation situations (e.g., anticompetitive practices) that are found to reduce benefits to other members. In such cases, the Dispute Settlement Body would use the voting procedures contained in the April 12, 1989, decision of the GATT Council of Representatives, which requires consensus acceptance of panel reports. Thus, a plaintiff that successfully argues its case against a foreign nonviolation situation may be unable to obtain relief for affected domestic industries because the defendant country has blocked acceptance of the panel report.

USTR officials said that the U.S. government intends to proceed in accordance with the U.S. interpretation of the UR agreement and, where appropriate, use Section 301 to take unilateral measures. In the event that other countries are able to use WTO dispute settlement procedures to frustrate U.S. government efforts to address nonviolation trade issues, the United States, as a sovereign nation, would reserve the right to take action inconsistent with U.S. obligations under WTO whenever such action is deemed to be in the national interest.

USTR officials acknowledged that with the UR agreement, such unilateral action may have more definite, or at least more transparent, costs. They said that, in the past, the U.S. government could at times take action that was inconsistent with GATT obligations, often without significant fear of retaliation. With the major exceptions of the EU, Japan, and Canada, no GATT member has the economic strength to unilaterally retaliate against the United States. Should another country have used the pre-Uruguay Round dispute settlement procedures to obtain worldwide support for retaliation, the United States could have readily delayed the proceedings and, if necessary, blocked acceptance of the panel report for as long as was needed.

Under the new dispute settlement procedures, the other member country could use the new WTO automaticity procedures and strict time limits to counter U.S. sanctions. Under these procedures, any U.S. unilateral trade action that violates WTO obligations could lead to a panel finding adverse to the United States. Unable to delay or block the procedures, the United States could face a panel recommendation that the U.S. government either remove its sanction or pay compensation. Unless it complied, the United States could face WTO-supported sanctions.

USTR officials have indicated that, even in instances where the United States faces WTO-supported sanctions, the United States may be able to pursue its unilateral strategy. They said that the United States would be able to impose trade sanctions for the duration of the dispute settlement proceedings, or longer if the Dispute Settlement Body gives the United States some time to remove them. In addition, the United States may be able to pursue its objectives if the other country is unwilling to jeopardize its overall relations with the United States by retaliating against U.S. sanctions or is so small that its retaliation measures do not significantly harm U.S. interests.

The United States as Defendant

The automaticity of the new dispute settlement rules also has implications for the United States as a defendant. In the past, the United States has used GATT procedural delaying and blocking tactics when they served the national interest. Under the strengthened procedures, however, the United States, along with all other WTO member countries, would lose this ability.[19] Certain international trade attorneys and other trade experts have expressed concern regarding the loss of these procedural tactics.

As is the case under the 1947 GATT agreement, WTO panels would have authority to conduct broad investigations of members' practices and procedures. WTO panels would have an open-ended charge to examine matters referred to them in light of the relevant provisions in the covered agreement at issue, and to make such findings as will assist the Dispute Settlement Body in making the recommendations or in giving rulings provided for in that agreement. With the exception of cases involving antidumping procedures, panels are authorized to question not only specific uses or applications of domestic law, but also the conformity of the law itself with WTO obligations.

Some trade attorneys and other experts we consulted raised concern regarding the impact on U.S. trade law. For example, the IPAC report on the UR agreements said

> We are particularly concerned by the empowerment of the Dispute Settlement Body panels to reverse the application of domestic trade laws. More disturbing still is the prospect that such action is subject to no appeal to U.S. courts.

One recent example of this authority under GATT was the panel report adverse to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), a trade remedy used by U.S. firms to protect intellectual property rights (e.g., patents, trademarks, and copyrights) from counterfeit and infringing imports. The GATT panel report recommended that the United States substantially change section 337 to conform to U.S. obligations under GATT. The United States blocked GATT council adoption of this report at seven GATT councils before finally accepting it in 1989.

Certain international trade attorneys and other trade experts that we consulted said that, given the breadth of the UR agreements, future WTO dispute settlement procedures may also intrude upon areas of domestic

[19]Although the United States advocated elimination of delaying and blocking tactics, as long as they were available the U.S. government made use of them when so doing was in the national interest. For example, the United States used delaying tactics in the GATT dispute settlement procedure involving its domestic international sales corporation program, which lasted from 1972 to 1984.

policy previously outside the scope of U.S. multilateral trade relations. These areas include environmental protection, consumer safety regulations, and health standards, whose use could, under certain circumstances, be viewed as constituting unfair trade practices. Already there have been several GATT dispute settlement cases regarding U.S. environmental protection standards. For example, there is a case pending on U.S. government corporate average fuel economy (CAFE) standards (which establish minimum average miles per gallon for cars sold in the United States).

In addition, the European Commission has identified[20] as potential violations of U.S. obligations under the UR agreements several U.S. federal and state laws and regulations on taxation; the environment; and product standards, testing, labelling, and certification. These include

- the federal luxury excise tax, contained in the Omnibus Budget Reconciliation Act of 1990, which the Commission argues has a disproportionate effect on European-made automobiles;
- state glass recycling regulations, such as those promulgated under the Public Resources Code of California, which the Commission argues unnecessarily burdens European bottle makers; and
- several federal and state laws setting tolerance levels for the amount of lead in products (i.e., California's Safe Drinking Water and Toxic Enforcement Act), which the Commission sees as a "structural impediment" to European producers' access to the U.S. market.

Certain international trade attorneys and other commentators we consulted have expressed concern about the United States subjecting itself to the new WTO dispute settlement procedure. Although GATT dispute settlement procedures are judicial in character, they also contain diplomatic and political elements, which is consistent with the nature and basic philosophy of GATT. In addition, panel deliberations are not governed by stare decisis, the common-law concept requiring judges to hand down decisions that are consistent with judicial precedent. Under the 1947 GATT agreement, while panelists generally review, and often are influenced by, prior decisions in cases similar to the one under consideration, they are not bound to follow them.

Like GATT panelists, WTO dispute settlement panelists would have greater latitude in making rulings than do U.S. judges. This situation has, in the

[20]Report on United States Barriers to Trade and Investment, 1994, Services of the European Commission, pp. 50-7.

past, created difficulties for the United States. While many GATT panels have rendered well-regarded decisions, prior experience has shown that the U.S. government may find itself in the awkward position of having to implement panel recommendations that contradict prior panel decisions, appear to lack merit, or are difficult to carry out given the relationship between the federal and state governments in the United States.

The new appeals process may help to improve the quality of panel decisions and ensure the integrity of the dispute settlement mechanism. Hudec has cautioned,[21] however, that the appellate tribunal would likely confront a number of obstacles to making high-quality legal decisions. He said that finding appeals judges with the requisite abilities may be problematic due to the limited pool of prospective judges, who would continue to be needed for primary panels. This problem would be compounded if the selection process becomes politicized. These judges may also have difficulty building a staff with the level of professional expertise they would need, due to the short supply of individuals with the blend of skills required to do high-quality legal work.

The appellate tribunal may also experience difficulty keeping pace with the demand for its services. According to Hudec, the dispute settlement workload could be significantly increased with the UR agreements. In addition, he said that the legal issues to be decided would be more complex than before, and the short time frame allowed for appellate decisions would increase the difficulty of producing high-quality legal work. This situation would be even more complex if every case goes to appeal, increasing the strain on the appellate tribunal's resources.

According to USTR officials, the United States, as a sovereign nation, would be able to choose to ignore adverse recommendations of WTO dispute settlement panels and appellate tribunals. Congressional action would in all cases be required to change U.S. law. Should the United States decide not to conform to the recommendations or pay compensation, such a response would most likely expose the United States to WTO-supported sanctions imposed by the member country that initiated the complaint. However, depending on its size and overall relations with the United States, the plaintiff country may choose not to impose sanctions, or the sanctions may not materially harm the United States which, as a result, may continue the practice that gave rise to the complaint.

[21]Hudec, "Dispute Settlement," pp. 191-4; and comments by Hudec before the OECD Workshop on the New World Trading System (Paris, France: Apr. 25-6, 1994).

Certain international trade experts we consulted speculated that repeated noncompliance with dispute settlement panel rulings, however, could possibly have serious implications for the entire multilateral trading system. They propose the following scenario:

A WTO member country disputes an appellate ruling and is unwilling or unable to implement the recommendations or pay compensation. The plaintiff seeks, and receives, authority to impose sanctions. The defendant country, bowing to domestic pressure, takes WTO-illegal action to protect or compensate those sectors of its domestic economy harmed by the sanctions. The plaintiff, in turn, seeks additional authority to escalate the sanctions, causing the defendant to threaten additional WTO-illegal measures.

While the potential for this eventuality may be remote, these experts believe that it should not be completely discounted. This type of situation, multiplied many times with various countries, could reduce benefits from world trade and endanger the viability of the multilateral trading system.

Having reviewed the available information, we believe that it would be difficult to predict the nature of dispute settlement in WTO and its potential impact on the United States. Clearly, the new procedures would strengthen U.S. ability to address violations of the UR agreements. However, there is evidence that the dispute settlement understanding may also lessen the effectiveness of the U.S.' unilateral actions to address nonviolation trade issues and may intrude on U.S. domestic policies. In response to these concerns, USTR states that, where necessary, the United States would reserve its right as a sovereign nation to violate its WTO obligations. Such action could result in WTO-supported sanctions being imposed against the United States. Should Congress ratify the UR agreements, we believe WTO dispute settlement would warrant close oversight to ensure that U.S. interests are being served.

Issues to Watch

To protect its interests should WTO be created, the United States may want to focus attention on whether concerns raised prior to ratification become evident in the functioning of WTO. These concerns include the following:

- Blocs of WTO members consistently use the new decision-making procedures in a manner that harms U.S. interests.
- In response to WTO interpretations of or amendments to UR agreements, Congress, or state governments, are recurrently asked to make amendments to U.S. laws that are not seen to be in the national interest.

- WTO dispute settlement panels continually render rulings adverse to U.S. use of unilateral actions to address nonviolation trade issues.
- In response to adverse WTO dispute settlement rulings, the United States substantially limits its use of Section 301 as a unilateral measure to address nonviolation trade issues.
- The WTO dispute settlement process generates rulings adverse to U.S. positions that are inconsistent with prior rulings, lack merit, or contain recommendations that are not feasible for the United States to implement, given its form of government.

One of the ministerial declarations[22] adopted in April 1994 invites the Ministerial Conference to "complete a full review of dispute settlement rules" within 4 years after the UR agreements enter into force. At that time, WTO ministers would decide whether to "continue, modify, or terminate" the WTO dispute settlement rules and procedures. Unless there is a need to act sooner, the United States could use this 4-year review as a vehicle for readjusting and improving WTO dispute settlement procedures based on lessons learned during the interim period.

[22]Uruguay Round: Final Texts of the GATT Uruguay Round Agreements, Including The Agreement Establishing The World Trade Organization As Signed on April 15, 1994, Marrakech, Morocco, Office of the U.S. Trade Representative (Washington, D.C.: U.S. Government Printing Office, 1994), p. 419.

Changes to Trade Rules

The Uruguay Round agreements, if ratified, could profoundly affect the rules governing the operation of the multilateral trading system. In particular, the agreements reached call for significant changes in multilateral disciplines regarding unfair trade practices, specifically government subsidies and "dumping." The administration and the Uruguay Round supporters viewed these changes as benefiting the United States. Some industry advisory committees and members of the international trade community have expressed reservations and urged a fuller debate on the potential impact of these changes on U.S. trade and the multilateral trading system. The Uruguay Round safeguards agreement regarding emergency relief from import surges, by contrast, would not have as great an impact and is generally supported by the trade community.

Provisions for Subsidies and Countervailing Duties

Background

Subsidies essentially lower a producer's costs or increase its revenues. As a result, producers may sell their products at lower prices than their competitors from other countries. Subsidies to firms that produce or sell internationally traded products can distort international trade flows.

All governments, including the U.S. government, maintain subsidy programs of one type or another. However, the United States has historically provided fewer industrial subsidies than most countries. An OECD study found that in 1986 the United States provided the lowest level of industrial subsidies of the developed countries. For the past several decades, the United States has sought to eliminate trade-distorting subsidies provided by foreign governments.

Countervailing Duty Laws

Countervailing duty (CVD) laws can address some of the adverse effects that subsidies can cause. Countervailing duties are special customs duties imposed to offset subsidies provided on the manufacture, production, or export of a particular good.

Under U.S. CVD law, private parties can petition the Department of Commerce to offset alleged material injury[1] caused by subsidized imports with a countervailing duty on the imports in question. In a CVD investigation, Commerce determines whether a country (or a person, corporation, or association within that country) is providing a subsidy, either directly or indirectly. If Commerce determines that a subsidy exists, it will impose countervailing duties on the subsidized imports if, as is required in most cases, ITC also finds that injury was caused or threatened to be caused by the subsidized imports.[2]

Under U.S. CVD law, there are two types of subsidies: export subsidies and domestic subsidies. Export subsidies are those that are tied to, or contingent upon, an industry's export performance. They typically consist of financial, tax, or other incentives to foster exports. Under U.S. law, export subsidies would be subject to countervailing duties.

Unlike export subsidies, domestic subsidies are not directly tied to exports; rather, they are provided to producers as a means of reducing overall production costs. Under U.S. law, to be countervailable, domestic subsidies must be "sector specific," that is provided to a specific industry or group of industries. Generally available government programs would not be subject to countervailing duties.

The United States has been the foremost user of the CVD remedy to address the problems posed by subsidies. The United States was particularly active in initiating CVD actions in the 1970s and 1980s. In the United States, from 1980 to 1986, for example, over 280 CVD cases were initiated. Although other countries, including Australia, Canada, the EU, and Japan, have enacted CVD laws, they have filed relatively few CVD actions; from 1980 to 1986, for example, these countries together initiated a total of only 39 CVD cases. Only one CVD case was filed against the United States during this period.

Tokyo Round Subsidies Code

While the 1947 GATT agreement and the 1955 GATT amendments addressed the problems of subsidies and cautioned against their use, they did not

[1]Under the Tariff Act of 1930, as amended [19 U.S.C. 1677 (7) (A)], "material injury" is defined as "harm which is not inconsequential, immaterial or unimportant."

[2]Unlike antidumping law, U.S. CVD law does not always require a material injury determination. An ITC injury finding is only required in cases involving countries that are signatories to the subsidies code or that provide reciprocal benefits to the United States. In determining material injury, ITC considers domestic consumption, U.S. production capacity, shipments, inventories, employment, and profitability.

specifically prohibit any type of subsidy. In the time between the signing of the 1947 GATT agreement and the start of the Tokyo Round in 1974, there was a significant increase in the use of government subsidies around the world.

At the start of the Tokyo Round, it was decided that subsidies should be brought under international disciplines. In the 1974 Trade Act, Congress noted that U.S. interests would be served by an international agreement to eliminate trade-distorting subsidies and urged negotiation of international rules governing the use of subsidies. However, according to U.S. government officials, while the United States was interested in strengthening GATT rules governing subsidies, most other GATT contracting parties were not. They were primarily concerned with disciplining the use of CVD laws by the United States and with protecting certain forms of subsidies from trade actions.

The Tokyo Round negotiations on subsidies resulted in a 1979 GATT subsidies code that was a separate agreement applicable only to those GATT contracting parties that chose to sign it. The code prohibited signatories from granting export subsidies for nonprimary products,[3] except for certain exceptions for developing countries. It permitted export subsidies for primary products provided that the subsidizing country would not capture more than an equitable share of world export trade in such products or materially undercut the prices of other suppliers. In addition, the code did not prohibit domestic subsidies; rather, it recognized that signatories use many different domestic subsidies, including those to promote research, assist disadvantaged regions, and advance the economic development of developing countries. The code, however, did seek to discipline the use of domestic subsidies so as not to adversely affect the trade of other signatories. It specifically stated that when domestic subsidies have undesirable effects on international trade, injured countries can seek relief in the form of countervailing duties, bilateral consultations or agreements, or multilateral conciliation.

The 1979 code did not provide an explicit definition of a "subsidy." Further, while the code stated that developing countries should try to reduce or eliminate export subsidies, it did not require them to do so. The code also established consultation, conciliation, and dispute settlement procedures for resolving signatories' conflicts over the use of subsidies.

[3]A "primary product" includes farm, forest, and fishery products.

In return for other countries' pledges to make progress toward reducing trade-distorting subsidies in the 1979 code, the United States agreed to other signatories' demands to use countervailing duties only if it determined that subsidized imports were causing or threatening to cause injury to a like U.S. industry. Before the 1979 code, the United States applied an "injury" test only in cases involving duty-free imports from GATT contracting parties.

Weaknesses of the 1979 Subsidies Code

It is generally acknowledged that the 1979 subsidies code has been largely ineffective in curbing the use of subsidies. The shortcomings of the subsidies code have included its

- unclear definition of a subsidy and the conditions necessary for a subsidy to be "actionable,"[4]
- lack of coverage of agricultural and domestic subsidies,
- nonapplicability for developing countries, and
- ineffective dispute settlement mechanism.

In addition, the code's utility was limited, as it has only 27 signatories.

In a 1988 submission to the subsidies and countervailing measures negotiating group during the Uruguay Round, the United States summarized the weaknesses of the 1979 code, noting that

> [T]here appears to be little or no international consensus regarding the meaning of key GATT and Code rules. Some rules, particularly those relating to agricultural, domestic, and developing country subsidies, are ineffective and impose inadequate levels of discipline with respect to subsidies that distort international trade flows. Finally, because the dispute settlement provisions of the Code permit the losing party to block adverse panel reports, the Code has failed to resolve a single contested dispute.[5]

In reviewing the benefits of the Tokyo Round subsidies code, our 1983 study found that the United States had met with little success in using the code to get foreign governments to reduce the use of trade-related subsidies.[6] Specifically, we found that the United States had been unable to

[4]Actionable subsidies are those that are not specifically prohibited under the subsidies agreement, but against which GATT remedies can be sought if they are found to distort trade.

[5]June 1988 U.S. Submission on Subsidies Code, as quoted in The GATT Uruguay Round: A Negotiating History (1986-1992), Vol. I, ed. Terence P. Stewart (Cambridge, MA: Kluwer Law and Taxation Publishers, 1993), p. 840.

[6]See Benefits of International Agreement on Trade-Distorting Subsidies Not Yet Realized (GAO/NSIAD-83-10, Aug. 15, 1983).

- persuade developing countries to make commitments to reduce or eliminate subsidies,
- persuade signatories to report the subsidies they use, and
- use the agreement's conflict resolution procedures to help eliminate the effects of specific subsidy practices.

U.S. Negotiating Objectives

To remedy the weaknesses of the 1979 subsidies code, the U.S.' main objective throughout the Uruguay Round was to (1) clarify and strengthen GATT subsidy rules and disciplines and (2) broaden the category of prohibited subsidies. In addition, throughout the UR, the United States sought to (1) bring developing countries under more substantive obligations regarding the use of subsidies, (2) strengthen enforcement of GATT subsidy rules by achieving a more effective dispute settlement process, and (3) maintain the effectiveness of U.S. CVD laws. Lastly, the United States sought to extend subsidy disciplines to new areas. These areas included industrial targeting and distortive government practices within the natural resources sector, such as Mexico's and other countries' preferential pricing of natural resources.

In the 1988 Omnibus Trade Act, Congress established the following objectives regarding subsidies: "to define, deter," and "discourage" the use of subsidies and extend the application of disciplines to unfair trade practices including resource input subsidies and export targeting practices not covered by existing GATT rules. In addition, it sought to have similar rules regarding subsidies applied to the treatment of primary and nonprimary products.

In a 1989 meeting of the subsidies negotiating group, the United States put forth more specific proposals regarding the subsidies agreement, including prohibition of export subsidies and domestic subsidies that exceed a certain percentage of a firm's sales. Further, the United States proposed a "benefit-to-recipient" standard[7] for calculating subsidies in countervailing duty cases, as is used by the Department of Commerce.

Shift in Negotiating Objectives Regarding Nonactionable Subsidies

Throughout the Uruguay Round, most countries, including Canada, the EU, India, and the Nordic countries, advocated the creation of a category of nonactionable subsidies. Although these countries differed somewhat regarding the types of subsidies that should be nonactionable, most of

[7]A "benefit-to-recipient" standard is a methodological approach for valuing subsidies by which the amount of the subsidy is determined in reference to a comparable commercial benchmark that would otherwise be available to the subsidy recipient within the jurisdiction in question.

them proposed that this category include subsidies for (1) research and development, (2) regional development, (3) environmental compliance, and (4) structural adjustment.

Throughout most of the subsidy negotiations, the United States opposed the establishment of a nonactionable category of subsidies, except for those involving government provision of basic services including unemployment and other human resource assistance, infrastructure aid, and national defense. In a 1989 submission to GATT, the United States noted that "...[g]iven the fungible nature of money, it is not at all clear that any subsidies should be nonactionable." At that time, the United States asserted that the categorization of subsidies as nonactionable would encourage countries to restructure their subsidy programs to fit the nonactionable category.

The Uruguay Round draft Final Act, or the Dunkel text issued in December 1991, included a category of nonactionable subsidies that represented a compromise between the views of the United States and most other countries. The text limited the category of nonactionable subsidies to (1) assistance for industrial research and (2) assistance for disadvantaged regions. Within the research area, the Dunkel text provided that government assistance of up to 50 percent for basic research and 25 percent for applied research would be nonactionable. The Dunkel text also included a provision that countries would have to notify GATT in advance of any research subsidies for which they sought nonactionable status.

In the final weeks of the UR negotiations, in response to concerns expressed by the U.S. science and technology community and Members of Congress, the United States shifted its negotiating position regarding nonactionable subsidies. The United States sought changes in the nonactionable subsidies category to expand the research and development activities that would be nonactionable under the agreement. Specifically, the United States proposed (1) raising the permissible levels of government assistance for research and development, (2) changing and expanding the definitions of nonactionable research and development, and (3) eliminating the mandatory requirement for advance notification regarding proposed research and development subsidies.

According to officials from the Department of Commerce and USTR, the United States shifted its position on research and development subsidies to protect the nature and level of ongoing U.S. technology programs and to

ensure that the firms participating in such programs would not be subjected to trade harassment by U.S. trading partners. At a March 9, 1994, congressional hearing, the Deputy U.S. Trade Representative stated that the United States sought to "protect the type of technology programs the U.S. currently has, while excluding the type of development and production assistance which other countries typically grant."

Results of the Uruguay Round

The final UR subsidies agreement would establish specific rules and disciplines in the subsidies area. It sets forth a definition of a subsidy and the conditions that must exist in order for it to be actionable. It defines a subsidy as a "financial contribution" provided directly or indirectly by a government or any public body, and one that confers a benefit. The financial contribution may take the form of a grant, loan, equity infusion, loan guarantee, forgiveness of taxes otherwise due, provision of goods and services other than infrastructure, government purchase of goods, or income or price supports to the benefit of a firm. In addition, the agreement extends the 1979 GATT subsidies code's list of prohibited subsidies to include de facto export subsidies (subsidies that are in practice contingent upon export performance) and subsidies contingent on the use of local content.

To be actionable under the agreement, subsidies must be "specific." A subsidy is considered "specific" to a firm or an industry, or a group of firms or industries, if the government limits access to the assistance in law or in fact. Generally available and widely used subsidies provided by subnational governments are not considered specific under the agreement. However, central government subsidies to a region are considered to be specific even if generally available throughout the region (except where exempted by nonactionable provisions discussed in the following section). Setting or changing generally applicable tax rates is not considered to be a subsidy.

The agreement also would expand subsidies' disciplines to cover domestic subsidies. It lays out specific criteria for demonstrating when a country's use of such subsidies has adversely affected another country's trade interests through price or volume/market share effects; it creates an obligation to withdraw the subsidy or remove the adverse effects when they are identified. In certain instances, the nature or amount of domestic subsidies are presumed to cause "serious prejudice," and the burden of proof is on the subsidizing country to show that adverse effects have not been caused.

Agriculture subsidies are primarily covered by the UR agreement on agriculture, which has special rules regarding export subsidies. The agriculture agreement does not prohibit export subsidies. Rather, it provides that countries reduce expenditures on export subsidies by 36 percent (24 percent for developing countries) and the quantity of subsidized exports by 21 percent (14 percent for developing countries) over 6 years from the 1986-90 base period (see ch. 6).

Dispute Settlement Provisions

The agreement establishes procedures in the new Dispute Settlement Body of WTO to determine (1) whether any form of trade-distorting subsidies exist; and (2) whether adverse trade effects may result, with specific time deadlines by which decisions must be reached. If a trade-distorting subsidy is suspected, a country affected by such a subsidy may seek consultations with the subsidizing country. If the consultations fail to produce a satisfactory solution, the issue may be brought before a WTO panel. Should the panel find that a subsidy has caused adverse trade effects, it may direct the subsidizing party to remove the subsidy or the adverse effects. In the case of suspected injury from subsidized imports, a country may use its national laws to conduct an investigation and impose countervailing duties to offset the benefits of the subsidy, if one is found.

Unlike the antidumping agreement discussed later in this chapter, the subsidies agreement contains no provision governing the standard of review[8] for WTO panels reviewing CVD cases. However, a ministerial declaration was adopted that recognized "the need for consistent resolution of disputes arising from antidumping and countervailing duty measures." According to the Department of Commerce, this declaration could support the notion that the standard of review in both antidumping and CVD disputes should be uniform.

In addition, the agreement specifies that the committee on subsidies, the WTO body that administers the subsidies agreement, review and act on countries' requests for certain subsidies to be deemed nonactionable (see the following discussion). The committee also is to review after 5 years the operation of the provisions regarding presumed serious prejudice and nonactionable subsidies to determine if they should remain in effect. The provisions will be terminated unless all committee members agree to keep them in effect.

[8]The standard of review is the criterion that dispute panels use to determine the merits of a given case. The standard is used to define the appropriate level of review given the issues involved in that case.

Under the new agreement, all WTO members would be required to adhere to the subsidies agreement, causing a significant increase in coverage from the 27 signatories of the 1979 subsidies code.

Three Categories of Subsidies

The agreement would create for the first time three categories of subsidies and remedies: (1) prohibited subsidies (known as the "red light" category); (2) actionable subsidies (known as the "yellow light" category), e.g., permissible subsidies that are actionable multilaterally and countervailable unilaterally if they cause adverse trade effects; and (3) nonactionable subsidies (known as the "green light" category). The latter includes permissible subsidies that are nonactionable and noncountervailable if they are structured according to certain criteria.

Prohibited subsidies, as previously noted, include subsidies to encourage exports, including de facto export subsidies, and subsidies contingent on the use of local content. Countries would have 3 years to bring inconsistent practices into conformity with the agreement from the date the UR agreement goes into effect. If prohibited subsidies are found in a WTO subsidies investigation, they must be removed.

Actionable subsidies are domestic subsidies against which remedies can be sought if they are shown to distort trade. Trade distortion occurs if (1) subsidized imports cause injury to a domestic industry (e.g., depress prices or threaten to do so); (2) subsidies nullify or impair benefits owed to another country under WTO (e.g., the benefits of bound tariff concessions); or (3) subsidized products displace or impede imports from another country or another country's exports to a third-country market.

There is also a special category of actionable subsidies that have a high likelihood of being trade distorting. These subsidies are presumed to cause "serious prejudice" to the trade interests of other countries when any of the following conditions are met: (1) the total ad valorem subsidization[9] of a product exceeds 5 percent of the value of the firm's or industry's output of a product (calculated on the basis of cost to the subsidizing government), (2) subsidies are provided to forgive debts, or (3) subsidies cover a firm's or an industry's operating losses. In cases where serious prejudice is presumed, the burden is on the subsidizing government to demonstrate that serious prejudice did not result from the subsidy in question. As previously noted, the provision establishing a presumption of

[9]Ad valorem subsidization is a percentage amount that is determined by dividing the appropriately allocated and amortized financial value of the subsidy by the sales of the product in question.

serious prejudice would expire automatically 5 years after the agreement enters into force unless the WTO subsidies committee decides to extend it.

Nonactionable subsidies include those that are not "specific" (i.e., not limited to an enterprise or industry or group of enterprises or industries). Subsidies also are nonactionable if they fall into three classes: (1) certain government assistance for research and precompetitive development activity, (2) certain government assistance for disadvantaged regions, and (3) certain government assistance to adapt existing plants and equipment to new environmental requirements.

Government assistance for research and development would be nonactionable if (1) the assistance for "industrial research" is limited to 75 percent of eligible research costs and (2) assistance for "precompetitive development activity" (applied research and development through the creation of the first, noncommercial prototype) is limited to 50 percent of eligible costs. "Eligible costs" are those that are exclusively related to the permissible research and development. For programs encompassing both industrial research and precompetitive development activity, an average of these percentages (62.5 percent) can be applied. Fundamental research activities independently conducted by universities or research institutes are completely nonactionable.

Government assistance for regional development would be nonactionable to the extent that the assistance is provided within clearly contiguous regions that are determined to be disadvantaged on the basis of neutral and objective criteria. These criteria must include either per capita income or unemployment levels. This assistance would be nonactionable if it is not targeted to a specific industry or group of recipients within the region.

Government assistance to meet environmental requirements would be nonactionable to the extent that it is limited to a onetime measure equivalent to 20 percent of the costs of adapting existing facilities to new standards and does not cover any manufacturing cost savings that may be achieved.

These subsidies would be nonactionable so long as the WTO subsidies committee received notification of the subsidy program before implementation. Governments may opt not to notify the committee about such assistance, but if they do not, these subsidies would be actionable if they do not meet the nonactionable criteria. Subsidy programs that are determined by the subsidies committee to meet the nonactionable criteria

may neither be overturned in WTO nor offset through the imposition of countervailing duties. However, if a program results in "serious adverse trade effects" to an industry in another country, the subsidies committee may recommend that the program be modified to remove these effects. In addition, a country may challenge another country's claim of a program's nonactionable status in the subsidies committee and through binding arbitration.

The nonactionable subsidy provisions would expire automatically 5 years after the agreement goes into effect unless the WTO subsidies committee decides to continue them. The provisions applicable to research and development also would be subject to review 18 months after the agreement goes into effect to determine whether any modifications are necessary, including changes in the definitions of the categories. However, at the 18-month review, there must be a consensus among members of the subsidies committee to make modifications.

Countervailing Duty Rules

The subsidies agreement would require countries imposing CVDs to follow certain rules of procedure and evidence. For example, the agreement specifies that CVDs are not to be imposed if subsidies are less than 1 percent ad valorem. It authorizes the practice of "cumulation" in a CVD investigation to collectively assess injury from several countries. In addition, it permits use of a "benefit-to-recipient" calculation methodology in CVD cases to determine the benefit conferred. Further, it requires the termination of a CVD order not less than 5 years after it is imposed unless such termination is "likely to lead to the continuation or recurrence" of subsidization and injury. It also clarifies the level of domestic industry support needed in order to bring a CVD action.

Subsidy Disciplines for Developing Countries and Those in Transition From Centrally Planned Economies

The agreement would introduce subsidy disciplines for developing countries, although subject to certain derogations (exceptions). Developing countries with an annual per capita GNP at or above $1,000 would have to progressively phase out all export subsidies over 8 years (unless extended by the WTO subsidies committee). Export subsidies used in a given product sector would have to be phased out over 8 years for the least developed countries,[10] and 2 years for other developing countries whenever the country's share of world trade in that sector reaches 3.25 percent during 2 consecutive years. Regarding local content subsidies, developing countries would be given a 5-year phase-out period, with the least developed countries permitted up to 8 years.

[10]Under the agreement, "least developed countries" are those designated as such by the United Nations that are members of WTO.

Developing countries would be exempt from presumptions of serious prejudice. They also would be exempt from multilateral (not CVD) subsidy remedies for certain WTO-notified, time-limited subsidies used to privatize state-owned firms. In the context of CVD laws, developing countries would benefit from special "negligible" import rules in injury investigations and a de minimis subsidy level[11] of 2 percent (developed countries would receive only a 1 percent de minimis level). During the first 8 years of the agreement, a de minimis level of 3 percent would apply for the least developed countries and developing countries that eliminate export subsidies on an expedited basis.

Countries in transition from centrally planned economies would be exempt from the prohibitions on local content and export subsidies for 7 years.

Agreement's Provisions Regarding Civil Aircraft Subsidies

Although government subsidies for civil aircraft would be covered under the subsidies agreement, there would be certain exemptions for this sector. Civil aircraft, for example, is excluded from the presumption of serious prejudice when there is a subsidy exceeding 5 percent ad valorem. In addition, the agreement provides that there is no presumption of serious prejudice by reason of debt forgiveness merely because a subsidized aircraft company falls behind in royalty payments to a government when the level of actual sales falls below the level of forecast sales. Lastly, the civil aircraft industry is excluded from the nonactionable category for research and development.

Potential Impact of the Agreement

With the exception of not imposing specialized subsidy disciplines on governments' industrial targeting practices and access to natural resource inputs, the United States was able to meet most of its negotiating objectives regarding subsidies and countervailing measures. The consensus of the trade community and the industry advisory committees was that the new subsidies agreement would overcome many of the weaknesses of the 1979 subsidies code. However, there was some concern that the benefits of the agreement may be negated by the creation of a nonactionable subsidies category and other aspects of the agreement.

Benefits of the New Agreement

The agreement met one of the most important U.S. negotiating objectives in that it better defines and strengthens subsidy disciplines. Unlike the 1979 code, the new agreement contains a clear definition of a subsidy and

[11]A de minimis subsidy level is the amount below which a subsidy is considered to be negligible. CVD cases are terminated in cases where the amount of a subsidy is below the de minimis level.

the conditions that must exist for a subsidy to be actionable. Further, it extends and clarifies the 1979 code's list of prohibited subsidies to include de facto export subsidies and those contingent on the use of local content. According to USTR, with these new provisions, countries would no longer be able to argue that only those subsidies expressly linked to exports in the text of a law are prohibited.

Unlike the 1979 code, the new agreement would cover domestic subsidies. In particular, it specifies how a country can prove that a domestic subsidy has adversely affected its trade interests ("serious prejudice") and creates an obligation for the subsidizing country to withdraw the subsidy or remove the adverse effects. According to USTR, the absence of such a provision was one of the greatest deficiencies of the 1979 code.

Another achievement of the new agreement is that it would introduce subsidy disciplines for developing countries, another key U.S. negotiating objective. Developing countries were virtually exempt from the 1979 code. Although these countries would have up to 8 years to comply with the new disciplines, all countries that are WTO members would eventually be brought under WTO subsidy disciplines (although they would receive some preferential treatment as discussed previously). In sectors where developing countries achieve a significant degree of export competitiveness, they would be compelled to eliminate export subsidies on a more accelerated basis. According to the Department of Commerce, this requirement could prove to be "of modest to significant benefit" to such industries as textiles and steel.

With the WTO's new binding dispute settlement mechanism, enforcement of subsidy rules and disciplines would be strengthened significantly, another major U.S. negotiating objective. Moreover, no country would be able to join WTO without accepting the new agreement's subsidy disciplines. According to USTR, this change would help U.S. industries in that it would make subsidy remedies "significantly more user-friendly than in the past."

Finally, the new agreement would make CVD rules more precise and preserve most existing U.S. CVD laws and practices, another U.S. negotiating objective. The agreement includes definitions regarding the identification and measurement of subsidies that are similar to existing U.S. standards. For example, the agreement would accept the "benefit-to-recipient" calculation methodology that the Commerce Department uses in CVD cases to determine a subsidy's value (another specific U.S. negotiating objective). It also would accept the U.S. approach

in determining whether a subsidy is "specific" and thus countervailable. Further, according to the Commerce Department, the addition of transparency (openness) and due process requirements would help bring foreign CVD systems up to U.S. standards. This development would benefit U.S. exporters as more countries begin to use CVD remedies.

The agreement would require the United States to make some changes in its CVD laws, including the imposition of a 5-year "sunset" provision, an increase in the de minimis threshold from 0.5 to 1 percent ad valorem, and the exemption from U.S. CVD laws of subsidies in the nonactionable category. According to USTR and the Department of Commerce, these changes may make it harder for Commerce to impose CVDs than in the past. However, USTR's position is that the benefits of the agreement outweigh the changes required in these laws.

Potential Drawbacks of the Agreement

Although most industry advisory committees and members of the trade community acknowledged that the new subsidies agreement has many benefits in clarifying and strengthening subsidy disciplines, concerns have been expressed about several potential weaknesses.

Nonactionable Category. The primary criticism of the agreement is its creation of a nonactionable (or "green light") category of subsidies. Specifically, there is concern that some countries would use this category as a subsidy "loophole," thus undermining the agreement's strengthened subsidy disciplines. Several industry advisory committees and Members of Congress, in fact, have voiced concern that foreign competitors will broadly apply subsidies in this category to gain a competitive advantage over the United States. They maintained that given the fungible nature of money, other countries may restructure their existing subsidy programs to fit the nonactionable criteria. Further, they maintained that any form of a permissible subsidy amounts to a general subsidy for an industry. In addition, they pointed out that the nonactionable category could hinder U.S. companies wanting to bring CVD actions against foreign companies.

Some trade analysts and Members of Congress have raised particular concerns about the nonactionable category for government assistance for research and development. They argued that this category would (1) promote an industrial policy in which the government actively supports selected industries; (2) require the United States to match or exceed foreign research and development subsidies to compete with other countries in a time of severe budget constraints; and (3) help U.S. competitors more than the United States since other nations, particularly

the EU, generally have larger development subsidies than the United States. The Department of Commerce and USTR have contested these views, maintaining that the United States already provides far greater funding for research and precompetitive development activities than any other country.

Some trade analysts and Members of Congress viewed the change in the U.S. position regarding this provision in the final weeks of the negotiations as a signal of a major shift in U.S. trade policy from one that attempted to eliminate government subsidies to one that attempts to expand them. Moreover, they maintained that, contrary to the administration's view, there was no need to expand the definitions of nonactionable research and development to protect U.S. technology programs because foreign countries rarely bring CVD actions. They also pointed out that U.S. research programs have never before been challenged in GATT. Further, they asserted that the agreement's definitions of research and development are so vague that almost any form of government assistance in this area would meet the nonactionable criteria. Finally, they maintained that the United States should not have pushed to eliminate the mandatory prenotification provision included in the Dunkel Text because the United States could have used this provision to determine what types of research and development subsidies other countries were planning. In their view, U.S. research and development programs are currently much more transparent than those of other countries.

With regard to the nonactionable category for regional development, some of the industry advisory committees have expressed concern that in many countries, including Canada and the EU, most heavy industries, such as steel, have plants in regions that would meet the criteria for a disadvantaged region. Although some of the advisory committees acknowledged that the "specificity" provision of the agreement (the provision that government subsidies limited to a specific firm or industry are actionable) may be of use in controlling these types of subsidies, they maintained that in many cases these subsidies are generally available in a particular region, which would make them nonspecific and thus not actionable. Some trade analysts believed that the agreement should have placed a cap on the amount of regional assistance that would be nonactionable.

Regarding the nonactionable category for environmental assistance, some industry advisory committees and trade analysts believed that the allowance of up to 20 percent of the costs of meeting new environmental

requirements can represent a fairly sizable government subsidy to an industry. Further, they maintained that although the United States has more rigorous environmental laws than most other countries, U.S. firms are unlikely to benefit from domestic subsidies. Concerns have also been raised that some countries may enact new environmental requirements every few years to permit additional government subsidies to the same firm.

Definition of a Subsidy in the Agreement

Another criticism of the subsidies agreement is its definition of a subsidy. Some industry advisory committees and trade analysts have voiced concern that the specific definition of a subsidy as a "financial contribution by a government" may be too narrow. They believed the requirement that a subsidy have a financial component would not cover various government benefits previously considered actionable, including export restraints and preferential access to credit. One trade analyst cited at least two standing U.S. CVD orders involving cases in which foreign countries were found to have subsidized industries without making a financial contribution. In one case, Argentina was found to have subsidized its leather industry by restricting exports of raw hides thereby reducing the industry's input costs. In the other case, South Korea was found to have subsidized its steel industry by directing government and commercial banks to provide the industry preferential access to more favorable credit. According to USTR, it is unclear how the new definition of a subsidy would affect these standing U.S. CVD orders. A few trade analysts were also concerned that the agreement's specific definition of a subsidy would enable countries to design new types of subsidies to fall outside the definition.

Other Concerns Regarding the Agreement

A few of the industry advisory committees have raised concerns that the agreement does not impose disciplines on industrial targeting practices or distortive government practices within the natural resource sector, such as two-tiered pricing[12] or access to natural resource inputs. Although the United States sought to extend subsidy disciplines to cover these areas, it was unable to do so because of lack of support from other countries.

Concerns have also been raised about other aspects of the subsidies agreement, including (1) the lengthy transition periods that developing countries have to adhere to the subsidies disciplines and (2) the lack of a specific provision governing the standard of review for WTO panels reviewing subsidies and countervailing measures.

[12]Two-tiered pricing occurs when a government charges a higher price for export sales of a natural resource input that is available domestically but scarce internationally than it charges for domestic sales, thereby providing a competitive advantage to a domestic industry using this input.

Finally, some trade analysts believed that, although the United States achieved most of what it sought in the subsidies agreement, the agreement is of limited value because the sectors that have traditionally received the largest amount of foreign government subsidies, e.g., agriculture, steel, and aircraft, are either (1) addressed separately in the UR (in the case of agriculture), (2) may be addressed in a separate agreement in the future (in the case of steel), or (3) excluded from parts of the agreement (in the case of aircraft).

Impact on U.S. State and Local Subsidies

According to the Intergovernmental Policy Advisory Committee, the subsidies agreement

> [m]ay affect many state and local development programs by making explicit that they may be subject to international discipline or may require changes to bring them into conformance with the new permissible category.[13]

Some trade analysts, for example, noted that the definition of a "specific" subsidy in the agreement may make actionable certain types of state government programs, including those to attract investment by specific foreign or domestic firms. They pointed out, however, that to be actionable, these programs would have to be found to distort trade or cause serious prejudice to other countries' trade interests.

Issues to Watch

As previously noted, the two primary concerns that have been raised regarding the subsidies agreement are (1) the establishment of a nonactionable subsidies category, which some analysts viewed as creating subsidy loopholes and (2) the specific definition of a subsidy, which some analysts viewed as too narrow.

In view of these concerns, the following issues would bear watching when overseeing the subsidies agreement if it is implemented:

- how foreign governments apply the nonactionable category of subsidies and how WTO panels and the WTO subsidies committee rule on such subsidies,
- how the Department of Commerce decides on the countervailability of foreign government activities that may relate to the nonactionable category in CVD actions, and

[13]The Uruguay Round of Multilateral Trade Negotiations, Report of the Intergovernmental Policy Advisory Committee, (Washington, D.C.: Jan. 1994), p. 21.

- how the new definition of a subsidy is interpreted by WTO panels and the WTO subsidies committee and affects standing U.S. CVD orders and future U.S. CVD cases.

Provisions for Antidumping

Background

Dumping is generally considered to be the sale of an exported product at a price lower than that charged for the same or a like product in the "home" market of the exporter. This practice is thought of as a form of price discrimination that can potentially harm the importing nation's competing industries. Dumping may occur as a result of exporter business strategies that include (1) trying to increase an overseas market share, (2) temporarily distributing products in overseas markets to offset slack demand in the home market, (3) lowering unit costs by exploiting large-scale production, and (4) attempting to maintain stable prices during periods of exchange rate fluctuations.

Historically, the dumping of goods has presented serious problems in international trade. As a result, the dumping of goods has led to significant disagreements among countries and diverse views about its harmfulness. Views on the harm caused by dumping differ. International trade rules, as defined by GATT, take political as well as economic concerns into account and view dumping and its potential harm broadly. Article VI of the GATT agreement notes that the contracting parties recognize that dumping "is to be condemned if it causes or threatens material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry."[14] The rules allow for the imposition of antidumping duties, or fees, to neutralize the injurious effect of these pricing practices. Some trade economists view dumping as harmful only when it involves the use of "predatory" practices that intentionally try to eliminate competition and gain monopoly power in a market. They believe that predatory dumping rarely occurs and that antidumping enforcement is a protectionist tool whose cost to consumers and import-using industries exceeds the benefits to the industries receiving protection. Moreover, they

[14]While article VI of the GATT does not define "material injury," the Tariff Act of 1930 (46 Stat. 590), as amended (19 U.S.C. 1677(7),), defines material injury as "harm that is not inconsequential, immaterial, or unimportant," and provides that in making a determination of "material injury," the ITC "shall" consider the volume of imports involved, the effect of the imports on U.S. prices for "like products," and the impact of the imports on U.S. producers of "like products."

believe that increased use of antidumping protection effectively reduces the anticipated gains that trade liberalization through tariff reduction will realize for the national economy.

The United States has long recognized the problems associated with dumping. Congress first addressed this issue in the Antidumping Act of 1916.[15] However, this act required that "predatory intent" be demonstrated, which was difficult to prove using the rules of evidence required by U.S. courts, thus making the act insufficient to protect U.S. producers from dumped imports. To supplement the 1916 act, Congress enacted the 1921 Antidumping Act, which provided the statutory basis, until 1979, for an administrative investigation by the Department of the Treasury of alleged dumping practices and for imposition of antidumping duties.[16]

In addition, the 1947 GATT agreement includes article VI, which addresses dumping. This article says that dumping "is to be condemned if it causes or threatens material injury to an established industry." However, the wording is far short of a binding obligation to prevent dumping.[17] The article allows for a permitted response to dumping in certain circumstances, i.e., it allows GATT contracting parties to use antidumping duties to offset the margin of dumping. However, the 1947 GATT antidumping provisions were very broad and did not specifically define how antidumping investigations were to be conducted. As a result, many signatories to the agreement applied laws that were inconsistent and in conflict with each other, causing dissension among GATT members.[18] Over time, some GATT members began to view other countries' use of antidumping laws as creating a new barrier to trade. Subsequent rounds of GATT negotiations attempted to resolve these problems by establishing a GATT antidumping (AD) code.

[15]The Revenue Act of 1916, ch. 463, sections 800-801, 39 Stat. 798 (commonly referred to as the "Antidumping Act of 1916," 15 U.S.C. sec. 71).

[16]The May 27, 1921, Antidumping Act, ch.14, 42 Stat. 11, 19 U.S.C. 160 (now repealed)[current version, Tariff Act of 1930, title VII sec. 731, as added July 26, 1979, P. L. 96-39, title I, sec. 101, 93 Stat. 162, (19 U.S.C. sec. 1673)]. This act reflects a two-part test (as required under international law), namely the determination of "dumping," and then the determination of "injury." See The World Trading System: Law and Policy of International Economic Relations, John H. Jackson (Cambridge MA: MIT Press, 1989), p. 228.

[17]See The World Trading system: Law and Policy of International Economic Relations, John H. Jackson (Cambridge MA: MIT Press, 1989), p. 227.

[18]Portions of this section are based on the antidumping discussion in Stewart, ed., The GATT Uruguay Round: A Negotiating History (1986-1992), Vol. II, pp. 1,383-1,710.

The antidumping code, first developed during the Kennedy Round of GATT negotiations (1962-67), defined a series of rules elaborating on the procedures and methodologies to be used in applying antidumping duties. These rules clarified terms and added more specific guidance to the procedures and criteria for determining dumping and injury. During the Tokyo Round of GATT negotiations, the AD code was further refined, and the rules governing dumping and injury became increasingly specific. Implementation of the AD code was limited in that it was only binding on those GATT members that chose to become signatories.[19] For example, our 1991 report[20] noted that as of September 1990, there were only 24 signatories to the AD code, representing 35[21] of the 97 GATT member countries.

During the 1980s, Australia, the United States, Canada, and the EU, respectively, were the major initiators of antidumping cases. These four signatories to the AD code accounted for 95 percent of the 1,456 antidumping cases reported to GATT from 1980 through 1989. The United States brought 395, or 27 percent, of the AD cases reported to the GATT AD Committee during 1980-89.[22] Although the 1979 GATT Tokyo Round's antidumping code established more detailed rules and procedures governing antidumping, long-standing problems still remained. Specifically, the following concerns were raised by signatories to the AD code:

- continued lack of transparency and due process[23] in antidumping proceedings,
- limited participation by all contracting members,
- interpretations inconsistent with the agreement,

[19]The Tokyo Round codes form an extension of GATT in that they explicitly extend trade discipline to, or define more precisely existing discipline and rules for specific nontariff barriers. The difference between the GATT approach and the codes approach is one of degree. In large part, the codes are used as an instrument because amending GATT has proven difficult.

[20]See International Trade: Comparison of U.S. and Foreign Antidumping Practices (GAO/NSIAD-91-59, Nov. 7, 1990), p. 9.

[21]EU members accounted for 12 of the 35 signatories to the AD code. Although there are only 24 signatories, this entity accounts for the additional member countries bound by the code.

[22]Major GATT trading partners initiated the following AD cases between 1980 and 1989: Australia - 421 (28.9 percent); Canada - 294 (20.2 percent); EU - 271 (18.6 percent); and Mexico - 30 (2.1 percent).

[23]The term "due process" refers to fair, reasonable, and orderly proceedings including proper notice, right to be heard, right to be present before the tribunal that pronounces judgment, an opportunity to enforce and protect one's rights, and the right of controverting, by proof, every material fact that bears on the question or right in the matter involved.

- lack of disciplines to prevent circumvention or evasion of antidumping orders, and
- lack of an effective dispute settlement mechanism.

While these concerns remained at the start of the Uruguay Round in 1986, there were no plans to renegotiate the 1979 AD code. As the UR progressed, however, the views of some of the members began to change and interest in addressing antidumping issues increased. The reasons cited for this change of view included (1) the expanded use of antidumping laws by member countries; (2) the concerns over the potential circumvention or avoidance of antidumping orders; (3) the concerns about the fairness of the procedures used during dumping and injury investigations; and (4) the development of separate, divergent AD systems and practices by major signatories. As a result, by 1987, countries targeted by antidumping measures, added renegotiation of the 1979 AD code to the Uruguay Round's agenda. Only a minority of code members, most notably the United States and the EU, did not support adding renegotiation of the 1979 AD code to the agenda.

U.S. Negotiating Objectives

The United States initially identified three broad goals for the Uruguay Round's antidumping negotiations. First, in response to concerns about the lack of openness that other countries exercised in implementing their antidumping laws, the United States sought to improve the transparency and due process procedures of antidumping proceedings. Second, the United States wanted effective disciplines established to prevent circumvention or evasion of antidumping orders. Third, the United States sought to maintain the effectiveness of domestic antidumping laws in order to keep them as a useful tool against injurious dumping.

According to a USTR official, the 1991 Uruguay Round draft Final Act, or Dunkel text, did not adequately address the U.S.' antidumping concerns and, in fact, raised several new concerns. As a result, the United States requested five changes to the text in December 1992, and requested six addition changes in November 1993. The United States sought these changes because companies in import-sensitive industries—those that traditionally use U.S. antidumping laws—expressed concern that the draft Final Act would force unacceptable changes to U.S. antidumping laws, thereby harming their industries. Also, importers, global-sourcing companies,[24] and exporters complained that the agreement did not

[24]Companies that use imported goods as inputs for production.

substantially reduce protectionist barriers—which is how they view antidumping laws—either in the United States or abroad.

According to U.S. negotiators, the first, and most critical, of the changes proposed by the United States in December 1992 was the establishment of a standard of review to be used in AD dispute settlement cases. The United States proposed a "reasonableness" standard. Second, the United States wanted the draft Final Act's anticircumvention[25] provision either substantially revised or completely removed. The United States maintained that the anticircumvention provision contained in the draft Final Act was inadequate for addressing many of the problems associated with circumvention. Third, the United States sought modification of the draft Final Act's strict sunset[26] provision, which the United States claimed would have forced the "near automatic" termination of dumping orders after 5 years. Fourth, the United States sought a clarification of "standing,"[27] relating to both the minimum level of support needed to bring an action and the rights of employees and unions to file complaints. The United States was concerned that the vagueness of definitions used to determine standing might lead to unnecessary disputes in the future. Finally, the United States wanted a clear definition of how "cumulation"[28] was to be used during dumping and injury determinations. The United States wanted the practice of cumulation defined in the agreement, because silence on whether cumulation was to be considered in antidumping investigations could be interpreted as a prohibition of its consideration in investigations. The United States wanted this clarified so that its use of cumulation would not be declared GATT illegal. The United States is one of several countries that apply cumulation in antidumping investigations.

[25]"Anticircumvention" laws seek to eliminate the ability of exporters to evade or avoid antidumping duties by changing the sites of assembly. Circumvention of antidumping orders has resulted in respondents having to bring repeat dumping cases against the same defendants after they have moved their assembly operations to a new site.

[26]"Sunset" refers to the duration of antidumping duties.

[27]"Standing" refers to whether a party "has a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy" (Black's Law Dictionary). With regard to antidumping proceedings under GATT article VI, standing refers to the right of a party or parties in the importing country to petition for relief under national AD laws.

[28]Under the practice of cumulation, the effect of imports from several sources are combined to determine the existence of injury to a domestic industry. Cumulative assessment of injury can occur when imports from many sources compete simultaneously with each other in a domestic industry and where all of the imports are subject to dumping or countervailing duty investigations. Over the years, virtually every user—including the United States—has found the practice to be practical or critical under certain circumstances when dumped imports from multiple countries are believed to be collectively causing harm to a domestic industry.

In November 1993, during the final weeks of the Uruguay Round negotiations, the United States proposed six additional changes to the AD text while continuing to push for its original five proposals. The United States made its acceptance of the final agreement conditional on how all 11 of its proposed changes were addressed. The first change specified a universal condemnation of injurious dumping. The remaining five addressed changes in the methods used for calculating when dumping has occurred and whether the domestic industry has been injured as a result. Specifically, the five methodological changes requested (1) a different method for calculating start-up costs in antidumping cases,[29] (2) a clarification of how substantial below-cost sales are measured, (3) a revised definition of when AD investigations should be terminated, (4) a clarification of price comparisons used in making price-averaging calculations,[30] and (5) a definition of the profit margin used in constructed value[31] equations.

Results of the Uruguay Round

At the completion of the UR, the United States had achieved most of its negotiating objectives and resolved several of the problems identified in the 1991 draft Final Act. In fact, both government and industry representatives with whom we spoke felt that, given the strong opposition to any changes in the AD text, the negotiators had accomplished a great deal. According to United States and GATT Secretariat officials, the new AD agreement would provide greater specificity of methodological and procedural rules used to determine dumping and assess injury. According to USTR, the new definitions would serve to increase predictability in all antidumping practices and would protect member nations' AD practices that conform to GATT standards from challenge by other GATT members.

[29]"Start-up costs" refer to the high per unit costs that are incurred when beginning a new production line. Costs will appear to be high until normal production levels can be achieved. For example, the initial per unit cost of producing a semiconductor is high. As production increases and more units are produced, however, the cost per unit drops.

[30]Price averaging is used to compare the exporting country's home market price for the subject merchandise to the export price for the same merchandise. This comparison may be based on (1) the weighted average of the home market prices to the weighted average of the export prices; (2) individual home market prices to individual export prices; and (3) individual to weighted average prices, in cases where it can be shown that spot dumping is occurring or where data are not available.

[31]"Constructed value" is a means of determining fair or foreign market value when sales of such or similar merchandise do not exist or, for various reasons, cannot be used for comparison purposes. In the United States antidumping law, the "constructed value" consists of (1) the cost of materials and fabrication or other processing employed in producing the merchandise, (2) the general expenses of not less than 10 percent of material and fabrication costs, and (3) a profit of not less than 8 percent of the sum of the production costs and general expenses.

The new agreement incorporates improved requirements for transparency and due process in AD cases, as suggested by the United States. Furthermore, dumping disputes between GATT members would be subject to the newly established dispute settlement process. The new dispute settlement process would use an explicit standard of review,[32] which according to a United States GATT antidumping negotiator, would make it more difficult for GATT panels to second-guess U.S. or other countries' antidumping determinations. The negotiator further stated that such determinations would be sustained when they are based upon proper and unbiased judgments of fact and permissible interpretations of the agreement. The negotiator further stated that this standard would ensure that reasonable latitude would be granted to investigating authorities in determining facts and applying the law. The negotiator concluded by stating that the new dispute settlement system would preclude panels from imposing their own judgments of fact or law on national antidumping authorities, when the authorities have acted in a reasonable manner.

The agreement would institute a sunset provision requiring a review of existing dumping orders every 5 years. This review is to confirm that the antidumping duties that remain active after 5 years are still warranted. The United States was able to reduce the impact on import-sensitive industries of the Dunkel drafts strict sunset provision. Although the United States had originally fought against the imposition of any sunset provision, U.S. exporters would benefit from sunset provisions implemented in other countries.

Under the new AD agreement, in order to initiate an antidumping investigation, domestic producers in a given industry would need to demonstrate more support for, than opposition to, the start of such an investigation. Further, the agreement contains a provision that would recognize the rights of unions and workers to file and support antidumping petitions. Finally, the agreement would authorize the practice of cumulation used by investigating authorities to determine if dumping and injury have resulted from the combined imports of several countries.

[32]Under the standard adopted in the UR agreement (and proposed by the United States), antidumping panels will have the task of determining (1) whether the domestic authorities' establishment of the facts is proper and (2) whether their evaluation of those facts is unbiased and objective. If the panel determines that these two criteria were met, the evaluation will not be overturned, even though the panel might have reached a different conclusion. The panel would be required to interpret the provisions of the agreement in accordance with customary rules of interpretation of public international law. Where the panel finds that a provision is subject to more than one permissible interpretation, the panel would be expected to find the authorities' measure to be in conformity with the agreement if it is based on one of those permissible interpretations. In the United States, the investigating authorities are the International Trade Commission and the Department of Commerce.

Regarding the methods used for calculating when dumping has occurred, the United States attained three of the five changes it sought. It was able to (1) change the criteria for defining the level of dumping that would need to occur for an antidumping case to proceed, although it was unsuccessful in getting a de minimis margin level of 0.5 percent, having to accept a level of 2.0 percent instead; (2) clarify when products that are sold below cost in their home market are in substantial quantities; and (3) clarify that average prices would be calculated for only identical products.

The United States did not achieve its objective concerning the adoption of an anticircumvention provision. However, a ministerial declaration accompanying the AD agreement recognizes the need to develop uniform rules in the future. In addition, the United States did not achieve its objective of having a universal condemnation of injurious dumping. Further, the United States did not obtain two of the five methodological changes it sought. Specifically, the United States was unsuccessful in changing the methods used to calculate start-up costs in antidumping cases. The United States also was unsuccessful in obtaining support for its proposal to add an alternative methodology for calculating the profit that is used in constructed value equations when determining if dumping exists.

Potential Impact of the Agreement

Unlike the 1979 AD code, the new AD agreement would apply to all members of the new World Trade Organization, thus increasing the uniformity of WTO members' antidumping provisions. This change should improve the conformity of members' antidumping regimes and lead to fewer conflicts if implemented faithfully. Also, improved transparency and due process in antidumping cases should help exporters and others who are exposed to AD laws. Further, these provisions should serve to reduce conflict among WTO members and improve the overall functioning of members' antidumping provisions. Recognition of the practice of cumulation would allow the United States and other contracting parties to continue using cumulation during dumping investigations.

Nevertheless, the lack of an anticircumvention provision could lead to continued conflicts over the circumvention of antidumping orders. The unilateral use of anticircumvention laws by contracting members, such as the United States, could be challenged in WTO dispute settlement cases.

Moreover, the agreement would require the United States to make a number of changes in its antidumping laws including:

- institution of a 5-year sunset provision on outstanding dumping orders;
- institution of procedures to determine whether an industry has sufficient support (i.e., standing) for the petition to warrant initiation of an investigation;
- use of average to average price comparisons in investigations;
- alteration of the de minimis dumping margin from 0.5 to 2 percent, when deciding whether to terminate an investigation; and
- alteration of the method used for determining the amount of profit used in devising constructed value equations.

Although the agreement should serve to improve international antidumping processes and procedures, the actual benefits are difficult to assess. For the United States, the agreement reflects a balance that has been struck between the needs of U.S. domestic producers who utilize U.S. antidumping laws, U.S. importers who source globally, and U.S. exporters who face foreign antidumping regimes. The extent to which the United States would be able to maintain the balance between these competing forces remains to be seen.

Industry Groups' Opinions

Regarding U.S. industries' views on the AD agreement, there were divergent assessments of its potential impact. For example, members of the Industry Policy Advisory Committee were divided in their views. In the antidumping portion of its January 1994 report[33] to the U.S. Trade Representative, IPAC presented two different positions. The first position was that of companies in import-sensitive industries that used U.S. antidumping laws. Its position was that these laws were in the industry's and the U.S.' best interest. In the IPAC Chairman's view, this opinion represented the predominant position of IPAC members. The second position represented was that of importing or global-sourcing companies and exporters that are exposed to antidumping laws and increasingly saw the laws as nontariff barriers to trade. Although both groups have expressed support for the overall 1994 GATT agreement, they raised concerns about individual provisions and U.S. GATT-implementing legislation.

Concerns of Domestic Users of Antidumping Laws

Domestic users of U.S. antidumping laws expressed concerns over various provisions of the antidumping agreement. They supported the AD agreement where it adopts the concepts and procedures expressed in U.S. law, as well as where the primary negotiating objectives of defining minimal procedural standards and improving transparency were achieved.

[33]See The Uruguay Round of Multilateral Trade Negotiations, Report of the Industry Policy Advisory Committee, U.S. Department of Commerce (Washington, D.C.: Jan. 1994).

However, they felt that many areas of the agreement would "diminish" the benefits they receive from current U.S. law. For example, they cited technical issues such as price averaging, standing, and investigation initiation as having been resolved in such a way as to diminish the AD trade remedy's usefulness to domestic industries. Domestic users also raised concerns that the cost—in terms of time, effort, and monetary expense—of bringing an antidumping case would rise because of the increased burden placed on industries to meet the more specific requirements defined in the AD agreement. Furthermore, they expressed concern that major issues such as circumvention, recidivism,[34] and third-country dumping[35] were not a part of the final AD agreement.

Exporters and Global-Sourcing Companies Support the Agreement

Exporters and global-sourcing companies were supportive of the Uruguay Round agreement and believed that it would successfully balance the interests of importers and exporters as well as the needs of industries that traditionally use U.S. antidumping laws. They cautioned that GATT-implementing legislation in the United States should not change this balance. They were particularly concerned about altering this balance because both exporters and global-sourcing companies saw the establishment of fair rules of conduct in antidumping provisions as increasingly important. For example, exporters have become more and more alarmed at the expanding number of countries that are passing antidumping laws. According to USTR, 36 countries currently have antidumping laws, and 16 other countries are developing or considering AD statutes. The adoption of these laws overseas raised concern among U.S. exporters who have been subject to overseas antidumping cases. Also, U.S. global-sourcing companies expressed concern that U.S. domestic AD law is often improperly applied resulting in the imposition of AD duties on fairly traded imports in a number of cases. In light of these points, this group of IPAC members cautioned that U.S. GATT-implementing legislation on antidumping should not resort to trade restrictions aimed at preserving the effectiveness of U.S. antidumping laws to the detriment of U.S. importers and exporters. Instead, the group believed that the legislation should seek to maintain the balance that was achieved in the 1994 GATT AD agreement.

Issues to Watch

Since various competing interests exist within the United States regarding the usage of antidumping laws (e.g., U.S. domestic producers versus U.S. exporters and global-sourcing companies), the operation of the new AD

[34]The agreement contains no provision addressing repeat offenders of the antidumping provisions.

[35]Third-country dumping occurs when country X dumps its products in country Y and causes injury to country Z's producers, who are competing for the same market but at "fair" prices.

code would need to be tracked closely to see if, overall, the balance between these two competing U.S. interests is being maintained. Therefore, the following issues would need to be watched:

- how WTO dispute settlement panel rulings on antidumping cases affect the balance between competing U.S. interests in this area,
- whether WTO is developing an effective anticircumvention provision to address U.S. concerns about the circumvention of its antidumping rulings,
- the effect of future WTO dispute settlement panel decisions on the viability of U.S. anticircumvention laws,
- what impact the AD agreement's sunset provisions have on U.S. domestic industries that use U.S. dumping laws and what impact the agreement has on those U.S. industries that are exposed to foreign antidumping laws, and
- whether the developing foreign AD laws and practices ensure adequate transparency and due process and do not become nontariff barriers to trade.

Provisions for Safeguards

Background

A safeguard is a temporary import control or other trade restriction a country imposes to prevent injury to domestic industry caused by increased imports. Article 19 of the current GATT agreement, known as the "safeguard clause," allows contracting parties to obtain emergency relief from import surges. It is designed to help the domestic industries adjust to an influx of fairly traded imports.

Article 19 permits a country whose domestic industries or workers are adversely affected by increased imports to (1) withdraw or modify trade concessions it had earlier granted or (2) impose new import restrictions if it can establish that a product is "being imported...in such increased quantities...as to cause or threaten serious injury to domestic producers...." The injury must be the result of the imports in question.

Under article 19, the countries involved must hold consultations concerning the action to be taken. If countries do not agree on the action to be taken, the exporting country has the automatic right to retaliate against a safeguard measure taken by an importing country. The exporting country may suspend substantially equivalent concessions or other

obligations that it has made under GATT. To prevent retaliation by the exporting country, the importing country may have to offer compensation in the form of lower import barriers for other goods.

Article 19 of the current agreement is generally interpreted to mean that import restrictions should be applied on a most-favored-nation basis against all foreign suppliers, not just the countries that appear to be the major cause of the problem. The thinking behind this approach is that when fairly traded imports cause injury, the exporting country has not committed a "wrong" for which it should be punished. Rather, the protection is accorded to a domestic industry that is unable to adjust to growing import competition without the protection of temporary restrictions.

Problems With Current GATT Article 19 Safeguard Rules

GATT contracting parties have rarely used article 19, and then only as a last resort. The stringency of article 19 provisions, particularly MFN application and automatic retaliation, have made it potentially very costly to apply a safeguard measure. USTR and Commerce officials identified the automatic retaliation feature of article 19 as the greatest deterrent to the use of GATT safeguard rules. Furthermore, countries have been less likely to use article 19 because of the potential demand for compensation and their shrinking ability to pay this compensation because of reduced tariff revenues.

Rather than using article 19, countries have increasingly relied on a plethora of "grey area measures," taken outside traditional safeguard laws, to address import surges. Such measures include voluntary restraint agreements (VRA)[36] and quotas. Countries have also entered into
(1) agreements to trade specific goods at specific prices; or
(2) industry-to-industry arrangements, which are often not publicly disclosed and are hard to quantify. (The United States and Japan, for example, have entered into two arrangements regarding trade in semiconductors since 1986.)[37]

According to USTR, some countries have had certain grey area measures in effect for up to 30 years. The EU, in particular, has made extensive use of grey area measures over the past several years; it currently has VRAs on

[36]Voluntary restraint agreements are agreements between countries to limit trade in specific goods. They are administered by an exporter and may or may not be formally negotiated.

[37]In June 1991, Japan and the United States concluded a new "U.S.-Japan Semiconductor Arrangement" that replaced the 1986 Semiconductor Arrangement. In this agreement, Japan affirmed it would provide improved market access for U.S. and foreign semiconductors, with a goal of establishing more than a 20-percent foreign market share of the Japanese market by the end of 1992.

over 40 products. Although the United States has used grey area measures over the past several years, according to USTR the United States has used them less frequently than the EU has. Grey area measures have been used most commonly in such industries as steel, automobiles, machine tools, consumer electronics, and textiles.

For several reasons, grey area measures have been relatively easy to initiate and maintain, particularly for countries with large markets. First, it is difficult for affected countries to challenge these measures under GATT. Second, since grey area actions do not have to be reported to GATT, a country can protect a domestic industry without first establishing injury or a causal link with imports. Further, a nation can single out only one or two countries for restraint (referred to as a "selective safeguard") and impose quotas or other restrictions for an indefinite period. In addition, the country or countries whose exports are restricted may benefit as its producers get market share or volume certainty and higher prices for their products. These countries capture the economic "rents" or the profit margin they realize from the higher prices to consumers that are the result of artificially restricting supply.

Despite the flexibility of and wide use of grey area measures, they can lead to significant distortions in international trade. For example, such measures can (1) protect inefficient industries, (2) prevent the entry of new suppliers, and (3) cause consumers to pay higher prices. Although some of these distortions might also result from GATT article 19 actions, grey area measures are generally viewed as more troublesome since they do not meet the standards established under article 19 for taking import restraint actions such as the provisions for transparency and nondiscrimination.

U.S. Safeguard Rules

Section 201 of the Trade Act of 1974, commonly referred to as the U.S. "escape clause" law, is based on article 19 of GATT. Under section 201, in response to a petition for relief,[38] ITC conducts an investigation to determine whether increased imports are a substantial cause of or threaten serious injury to a domestic industry. If a majority of ITC commissioners finds neither serious injury nor threat of serious injury, no further action is taken. When a majority of commissioners makes an affirmative injury determination or they are equally divided in their

[38]A petition for import relief can be filed by a firm, trade association, union, or other entity that is representative of a domestic industry. ITC can also initiate section 201 investigations on its own or at the request of the President, USTR, the House Committee on Ways and Means, or the Senate Committee on Finance.

decision, each commissioner recommends to the President the type and amount of import relief they believe necessary to prevent or remedy the injury. Commissioners can recommend relief in the form of new or increased tariffs, quotas, trade adjustment assistance to workers, or a combination of these measures. The import relief granted by the President cannot exceed a maximum of 8 years.

U.S. Negotiating Objectives

According to USTR and Commerce officials, the U.S.' main objective concerning safeguards in the Uruguay Round was to get other countries to use GATT rules when applying safeguards rather than resorting to grey area measures. In addition, the United States sought to ensure that other GATT contracting parties use more uniform standards and procedures before resorting to safeguard relief to ensure that affected parties receive fair treatment and adequate due process.

Under the 1988 Trade Act, U.S. negotiating objectives regarding safeguards were to (1) improve and expand rules and procedures covering safeguard measures; (2) ensure that safeguard measures are transparent, temporary, degressive (i.e., liberalized over time), and subject to review and termination when no longer necessary to remedy injury and to facilitate adjustment; and (3) require notification of, and monitor the use by, GATT contracting parties concerning import relief actions.

Results of the Uruguay Round

The new Safeguards Agreement would establish rules for the application of safeguard measures by WTO contracting parties, which would impose new discipline on the length and type of safeguard actions that may be taken.

The agreement would require that safeguard measures be limited to an 8-year period (10 years for developing countries). It provides for suspending the automatic right to retaliate to a safeguard measure for the first 3 years. It also requires that existing VRAs be phased out within 4 years, but allows each country one "grandfathered" exception through 1999 provided that the exception is mutually agreed upon by the affected countries and approved by WTO. However, it would maintain the requirement that safeguards be applied on an MFN basis rather than being applied selectively (applied to just the country or countries causing injury to the domestic industry).

The Safeguards Agreement, in addition, would require that the process for making injury determinations before taking safeguard actions be transparent. It requires that an investigation be undertaken before safeguard measures are applied; this action would include giving public notice to all interested parties. It also specifies that a public hearing be held (or a comparable opportunity to present the views of affected parties) and that a report be published, giving a detailed analysis of the reasons for the decision. Further, it defines criteria to be used in injury determinations. For example, it requires that "serious injury" be defined as a "significant overall impairment in the position of a domestic industry." The agreement also would require a causal link between the significant injury or threat of injury and the increased imports.

The agreement would require that all safeguard measures taken be degressive and subject to midterm review. It also discourages repeat applications of safeguards for the same product and recognize the right to impose emergency safeguard actions on perishable products, such as agricultural and horticultural goods. Finally, the agreement provides for the establishment of a Committee on Safeguards to monitor the implementation of the new agreement and recommend additional improvements.

Potential Impact of the Agreement

The Safeguards Agreement meets the U.S. negotiating objectives. First, it would clarify how safeguard measures are to be used by WTO members, which would impose greater discipline on the use of grey area measures while making multilateral safeguard rules less costly to use. Second, it provides for notification and monitoring of the use of safeguard actions by WTO members. Finally, it meets the U.S. objective of ensuring that safeguard measures are transparent, temporary, degressive, and subject to review. In addition, the agreement incorporates many of the provisions included in U.S. safeguards law in ensuring that all affected parties receive adequate due process and fair treatment. Further, since the agreement only disciplines measures that afford protection for domestic industry, it does not preclude the United States from entering into arrangements to open foreign markets like the 1991 U.S.-Japan Semiconductor Arrangement.

With the prohibition on retaliation for the first 3 years of a safeguard measure, restrictions imposed on the length and type of such measures, and the requirement for transparent procedures, the Safeguards Agreement appears to contain incentives for countries to use WTO

safeguard rules rather than resorting to grey area measures. According to IPAC, the agreement "represents a significant step toward eliminating the use of grey area measures."[39]

Industry Concerns About the Agreement

Although most industry advisory committees and members of the trade community believed that the Safeguards Agreement would succeed in imposing new discipline on the use of safeguard measures, they have expressed a few concerns about its potential drawbacks. For example, a few of the industry advisory committees expressed disappointment that the agreement would prohibit countries from applying selective safeguards. Some of the industry advisory committees also were disappointed that the agreement would not require safeguarded industries to formulate a structural adjustment plan before applying a safeguard measure.[40] Lastly, IPAC expressed concern that the agreement does not offer any guidance as to what constitutes liberalization of a safeguard action. Specifically, IPAC was concerned that the agreement could permit countries to liberalize a safeguard action only marginally.

Issues to Watch

As previously noted, the main concern regarding GATT safeguard rules in the past has been countries' (1) reluctance to use the rules and (2) reliance on grey area measures. As a result, the following issue bears watching when overseeing implementation of the agreement—whether WTO members are using WTO rules when applying safeguards.

[39]The Uruguay Round of Multilateral Trade Negotiations, p. 54.

[40]The Safeguards Agreement would require that a country give evidence that a safeguarded industry is adjusting only when the country is seeking to extend an initial safeguard period.

New Areas Addressed by the Uruguay Round

The Uruguay Round provided the United States with the opportunity to press for the negotiation of new areas, not previously addressed in GATT, that were of increasing economic importance to the country. These areas included trade-related aspects of intellectual property rights (TRIPs), trade in services, and trade-related investment measures (TRIMs). While many, primarily developing, countries resisted including these areas in the Uruguay Round, the United States was successful in obtaining its negotiating objectives, although with varying degrees of success.

Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods

Background

The U.S. Constitution grants Congress the power "...to promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." The U.S. government has an interest in protecting these legal rights, falling within the area referred to as intellectual property rights (IPR), because technological advance is a major determinant of the growth of economic activity and living standards. Ensuring the protection of intellectual property encourages the introduction of innovative products and creative works to the public. Protection is granted by guaranteeing proprietors limited exclusive rights to whatever economic reward the market may provide for their creations and products. The primary forms of intellectual property rights in worldwide use are copyrights, patents, and trademarks.

The World Intellectual Property Organization (WIPO), a U.N. specialized agency, is a world body whose mission is to (1) promote the protection of intellectual property throughout the world through cooperation among countries and, where appropriate, in collaboration with international organizations; and (2) ensure administrative cooperation among the intellectual property unions. WIPO administers a number of international agreements on intellectual property protection, including in particular the

Berne Convention for the Protection of Literary and Artistic Works, which provides for copyright protection;[1] and the Paris Convention for the Protection of Industrial Property, which provides protection for patents, trademarks, and industrial designs and the repression of unfair competition.

According to U.S. officials, these conventions do not contain specific commitments in important areas. For example, the Paris Convention does not contain a required minimum length of time for patent protection nor specify the subject matter to be covered by patents, and the Berne Convention does not provide copyright protection for newer creations such as sound recordings. Further, they do not provide for meaningful enforcement measures, an area long considered crucial by U.S. interests; the Industry Functional Advisory Committee on intellectual property rights has pointed out that standards of protection are useless unless they are enforced.

The negotiating opportunity provided by the Uruguay Round became particularly important in the mid-1980s as prominent U.S. industries faced opposition overseas, primarily from developing countries, to granting and/or enforcing IPR. While developed countries generally consider intellectual property a private right that should be protected as tangible property rights are protected, some developing countries have considered intellectual property a public good that should be used to promote economic development.[2]

U.S. industries dominate the creation and export of intellectual property, and piracy of U.S. intellectual property in the developing world was recognized as a serious problem for U.S. interests by the 1980s. For example, in a 1985 report by the International Intellectual Property Alliance describing losses to U.S. interests stemming from ineffective copyright protection in 10 key developing countries,[3] it was estimated that the movie industry was losing over $130 million annually, the computer software industry was losing over $125 million, the publishing industry

[1]The Universal Copyright Convention, administered by the U.N. Educational, Scientific and Cultural Organization, also provides for copyright protection.

[2]While the debate on IPR has historically been focused on the developed/developing country debate, the situation has become less clear in recent years. Developing countries have begun to adopt and improve regimes for the protection of intellectual property, while the United States is currently experiencing some increase in intellectual property problems with developed countries. See Intellectual Property Rights: U.S. Companies' Patent Experiences in Japan (GAO/GGD-93-126, July 12, 1993).

[3]Brazil, Egypt, Indonesia, South Korea, Malaysia, Nigeria, the Philippines, Singapore, Taiwan, and Thailand.

was losing over $400 million, and the recording and music industries were losing over $600 million.

The most comprehensive investigation of U.S. corporate losses to IPR infringements was conducted by the U.S. International Trade Commission (ITC) in 1987 at the request of USTR.[4] ITC surveyed 736 U.S. firms to estimate the effects of inadequate IPR protection in 1986. The firms surveyed included all of the Fortune 500 companies, selected members of the American Business Conference,[5] and smaller firms in industries known to depend on intellectual property royalties or sales protected by intellectual property.

In the ITC survey, intellectual property was considered to be of more than nominal importance for 269 of the 431 responding firms. Of these 269 firms, 167 provided estimates of intellectual property revenue losses that totaled $23.8 billion, representing 2.2 percent of total company sales and 2.7 percent of sales affected by IPR.[6] Domestic sales lost in the United States due to intellectual property-infringing imports were estimated at $1.8 billion, while reductions in U.S. exports were $6.2 billion. Respondents also identified losses of $3.1 billion in royalties and fees that were not paid as a result of inadequate intellectual property protection.[7]

The international transfer of technology benefited the United States in the past as it adopted European-developed technologies.[8] A similar process of technology transfer now benefits the developing world. By not paying the creators of intellectual property in the developed world, developing country producers can save the cost of innovation and thus lower their

[4]Foreign Protection of Intellectual Property Rights and the Effect on U.S. Industry and Trade, U.S. International Trade Commission, Publication 2065 (Washington, D.C.: Feb. 1988).

[5]The American Business Conference is comprised of chief executive officers of midsize, high-growth companies. The group concerns itself with tax policy, regulatory reform, and international trade issues.

[6]Appendix H of the ITC study extrapolated the survey-identified losses of $23.8 billion to the entire economy and presented a likely range of aggregate losses: $43 billion to $61 billion. ITC warned that although the range may be "reasonable," the "data collected by the Commission's questionnaire could not be projected to U.S. industry as a whole with any statistical validity."

[7]ITC recognized that the economic impact of insufficient IPR is difficult to capture in this kind of analysis, and that, in addition to the possibility that the survey results were biased and self-serving, it is difficult to link lost firm profits to IPR infringement. For the 45 respondents providing sufficient information, ITC estimated that lost profits were 0.67 percent of total company sales. Company estimates of IPR job losses from 43 respondents totaled 5,374, while 72 respondents said no jobs were lost due to IPR infringement.

[8]See Nathan Rosenberg, "American Technology: Imported or Indigenous?" American Economic Review, Vol. 67, No. 1 (Feb. 1977), pp. 21-6.

production costs. Consumers in developing countries pay lower prices than they would if IPR were protected and intellectual property creators in developed countries reimbursed.[9] The United States objects to this lack of intellectual property protection in developing nations. The extension of IPR throughout the world is clearly in the interest of intellectual property creators in developed nations, and, according to a Patent and Trademark Office official, strong protection would encourage investment in industries that would provide jobs in the developing world.

The U.S. government began taking actions in the mid-1980s to protect U.S. business interests. Congress specifically made intellectual property issues actionable in 1984 by amendment to Section 301 of the Trade Act of 1974. "Special 301" procedures specifically designed to improve global intellectual property protection were created in the 1988 Omnibus Trade and Competitiveness Act. Use of these provisions has resulted in improved IPR in many countries since the late 1980s, according to industry officials.

Two U.S. companies in particular were interested in having IPR negotiated in the Uruguay Round: Pfizer and International Business Machines (IBM). Pfizer was interested in obtaining product patent protection for pharmaceuticals, and IBM was interested in solidifying copyright protection for computer software under the Berne Convention. These companies, together with several others, joined forces to create the Intellectual Property Committee (IPC) in 1986, which worked with the U.S. government to get IPR included in the new round of GATT negotiations. The United States was the driving force behind the movement to include comprehensive IPR issues on the negotiating agenda, and this effort was ultimately successful despite developing country arguments that IPR was beyond GATT's authority.

U.S. Negotiating Objectives

According to the 1986 Punta del Este declaration, the negotiating objectives for intellectual property were to clarify GATT provisions and elaborate, as appropriate, new rules and disciplines in this area in order to (1) reduce distortions and impediments to international trade, (2) promote effective and adequate protection of intellectual property rights, and (3) ensure that measures and procedures to enforce intellectual property do not become barriers to legitimate trade. Negotiations were aimed at

[9]See Arvind Subramanian, "TRIPs and the Paradigm of the GATT: a Tropical, Temperate View," The World Economy, Vol. 13, No. 4 (Dec. 1990), pp. 509-21.

developing a multilateral framework of principles, rules, and disciplines dealing with international trade in counterfeit goods.[10]

The 1988 Omnibus Trade and Competitiveness Act set forth the following negotiating objectives for the United States: (1) the enactment and effective enforcement by foreign countries of laws that recognize and adequately protect intellectual property and provide protection against unfair competition; and (2) the establishment of obligations in GATT to implement adequate substantive standards based on international agreements and national laws, to establish procedures to enforce these standards both internally and at the border, and to implement effective dispute settlement procedures. Further, the negotiations were to supplement and strengthen standards for protection and enforcement in existing conventions on international intellectual property administered by other international organizations.

In addition to those objectives, industry representatives focused on specific negotiating priorities such as a provision for prompt and effective civil and criminal enforcement of IPR, restrictions on compulsory licensing practices for patents,[11] and the elimination of derogations (exceptions) to national treatment[12] that discriminate against certain U.S. intellectual property owners.

Results of the Uruguay Round

According to industry advisory committees, the TRIPs agreement basically met U.S. objectives, though with some noticeable exceptions. While the TRIPs agreement, if implemented, would provide benefits for U.S. interests, these benefits would not be realized for several years with respect to the enactment of IPR commitments by developing countries. The TRIPs agreement would establish (1) MFN status and (2) national treatment (with some exceptions) to each area of intellectual property included in the agreement. TRIPs would mandate improved or new standards of intellectual property protection and enforcement in the areas of copyrights, patents,

[10]Counterfeiting refers to the unauthorized and deliberate duplication of another's trademark.

[11]A compulsory license is an authorization by a government that permits someone, without the consent of the patent owner, to make, use, or sell a patented product; or to use a patented process; or to use, sell, or import the product produced by a patented process. Compulsory licenses are granted by governments for many reasons, among them to permit local production of a product if the patent owner is not "working," (i.e., manufacturing the product) the patent in the country within a specified period of time or to allow the holder of a patent to exploit the patent which, absent a license, would infringe an earlier granted patent.

[12]National treatment ensures nondiscrimination by requiring that once foreign goods have entered a market, a country must treat these goods no less favorably than equivalent domestically-produced goods.

trademarks, trade secrets, layout-designs of integrated circuits, industrial designs, and geographical indications. Enforcement measures are enumerated, and they would address administrative and judicial procedures, civil and criminal penalties and procedures, and customs regulations (border measures). Further, the dispute settlement understanding would apply to intellectual property matters.

Standards for IPR

Copyrights. As defined in the Berne Convention, a copyright provides protection for literary and artistic works such as books, musical compositions, and cinematographic works (movies). A copyright is a property right in an original work of authorship that arises automatically upon creation of such a work and belongs, in the first instance, to the author. A copyright owner (i.e., an author or someone to whom an author has assigned a copyright) has the exclusive right, subject to certain limited privileges afforded to users, to (1) reproduce the work; (2) prepare translations, abridgements, or other adaptations of the work; (3) distribute copies of the work (or adaptations) to the public; and (4) publicly perform (in person or by broadcasts and the like) the work. Copyrights protect the expression of ideas, but do not protect ideas, facts, methods of operation, systems, or processes. Copyright protection is for a specified length of time, generally the life of the author plus 50 years.

The TRIPs agreement obligates signatory countries to provide the substantive copyright protection specified in the Berne Convention (except for moral rights).[13] TRIPs also contains new provisions not covered by the Berne Convention. As a result, the copyright protection provided in the TRIPs agreement is commonly referred to as "Berne Plus." In this latter regard, TRIPs expressly requires that computer software be protected as a literary work under Berne, and it also protects databases as compilations. The rights of performers, producers of sound recordings, and broadcasting organizations are also addressed under the TRIPs copyright section. For example, TRIPs would give performers the right to prevent bootleg recording of their concerts and the sales of copies of such recordings.

[13]Copyright includes both economic rights and moral rights in many countries (though not in the United States). The former refers to an author's right to exploit, sell, rent, etc., a protected work, while the latter refers to an author's right to be identified as an author and to maintain the integrity of the protected work. Moral rights are not transferable and, in many countries, following the civil law tradition, cannot be waived. Unless they are waivable, such rights may impede the purchaser's right to exploit fully a legally obtained license to acquire or use a copyrighted work. For example, in many countries a photographer could prevent a magazine from cropping a photograph the magazine had purchased for publication if she or he felt such an act would distort the work in a way that would be prejudicial to her or his honor or reputation. The United States claimed that its federal and state laws, while not expressly recognizing moral rights, met Berne's minimum requirements in this area when it adhered to the Convention in 1989, and the exclusion of moral rights in the TRIPS text was considered necessary for the United States to avoid any possibility of these rights being strengthened.

The term of protection mirrors that which is provided for copyrights in the Berne Convention (life of the author plus 50 years, or 50 years from first publication). For performers and producers of sound recordings, the term of protection would be 50 years from the end of the calendar year in which the recording was made or the performance took place. According to the intellectual property Industry Functional Advisory Committee, this accomplishment was a major objective of U.S. industry and government. For broadcasters, the term would be 20 years from the end of the calendar year in which the broadcast took place.

Exclusive commercial rental rights are specifically addressed in TRIPs. Copyright holders of computer programs would have the right to authorize or prohibit the commercial rental to the public of originals or copies of their works. While rental rights would be granted for copyright holders of movies, member countries could be excepted from this commitment under certain circumstances. This exception accommodates the United States since it does not provide for exclusive rental rights for movies. However, according to a U.S. copyright expert, if widespread copying of videocassettes for home use were to occur, such rights would have to be created.

Producers of sound recordings would also be granted rental rights, although a provision was added to grandfather rental systems like that of Japan into the TRIPs agreement. While the Japanese system provides 1 year of exclusive rental rights for sound recordings followed by "equitable remuneration" to rights holders, the TRIPs grandfathering exception would not require any period of exclusivity. For countries that had a system of equitable remuneration of rights holders in place with respect to sound recording rentals as of April 15, 1994, such a system could be maintained under TRIPs provided that the commercial rental of sound recordings was not giving rise to the material impairment of the exclusive rights of reproduction of rights holders.

Patents. A patent protects an invention by giving the inventor the right to exclude others from making, using, or selling a new, useful, nonobvious invention during a specific patent term. Patents give inventors the opportunity to obtain substantial economic benefits from exclusive exploitation of their discoveries for a limited time. In return, they must disclose the details of their inventions so that others can use the invention after the patent expires. In addition, others can use this information to build on the disclosed technology during the term of the patent.

Similar to the situation with copyrights, the TRIPs agreement builds on the patent protection required by the Paris Convention and is commonly referred to as "Paris Plus." The TRIPs text mandates that virtually all types of inventions be patentable subject matter, including pharmaceuticals and agricultural chemicals.[14] Plant varieties would have to be protected "...either by patents or by an effective sui generis [unique] system or by any combination thereof."[15] Product, as well as process, patents would have to be available, and the term of patent protection would be at least 20 years from the date of filing the patent application. The exclusive rights of patent holders are set forth for the first time in an international treaty in the TRIPs agreement. A product patent holder would have the exclusive right to prevent others from making, using, offering for sale, selling, or importing the patented product. A process patent holder would have the exclusive right to prevent others from using the process; and using, offering for sale, selling, or importing the product obtained directly by using that process.

According to the agreement "...patents shall be available and patent rights enjoyable without discrimination as to the place of invention, the field of technology and whether products are imported or locally produced." This last provision would require that importation satisfy local "working" requirements for patents, thereby precluding compulsory licensing for failure to locally manufacture the invention (previously mentioned), a major objective of U.S. industry.

While compulsory licensing is allowed under TRIPs, numerous restrictions would be placed upon such licensing. For example, compulsory licensing would be (1) permitted only if efforts to obtain authorization from the rights holder on reasonable commercial terms and conditions have not been successful, (2) nonexclusive, (3) authorized predominantly for the supply of the domestic market, and (4) accompanied by adequate remuneration for the right holder. Compulsory licensing of semiconductor technology (semiconductor layout-designs as well as patents on semiconductor products and processes) would be permitted only "for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive." This language was one of two changes made to a draft TRIPs text that was created in 1991.

[14]However, plants and animals other than microorganisms, and biological processes for the production of plants or animals other than nonbiological and microbiological processes, could be excluded from patentability.

[15]One such sui generis protection scheme would be the breeder's rights provided under the International Conventions for the Protection of New Varieties of Plants (1978 UPOV Convention and 1991 UPOV Convention).

In the case of dependent patent compulsory licensing (where compulsory licensing is used to permit the exploitation of a patent—the "second patent"—which cannot be exploited without infringing another patent—the "first patent"), the second patent invention would have to involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent.

Pharmaceutical and agricultural chemical product patent protection would not be required in developing countries for 10 years from the date on which the agreement establishing WTO would come into force, if such protection were not provided in a developing country on the date of entry into force (see the discussion on transitional arrangements on p. 98). However, a system referred to as the "black box" has been adopted in TRIPs under which countries would have to accept filings for "new" patent applications for pharmaceutical and agricultural chemical products upon the date of entry into force of the agreement in these countries. This system would protect the future patentability of inventions that satisfy the criteria of patentability upon the date they are filed in the black box.[16] Further, for those patent applications that would go through the testing procedure rapidly and obtain authorization for marketing before patent protection became available, "exclusive marketing rights" (which would keep competitors off the market) would have to be granted for 5 years after obtaining market approval in the country where the application was on file, or until a product patent was granted or rejected in that country, whichever period was shorter.[17]

Trademarks. Manufacturers or merchants use trademarks to identify their goods and distinguish them from others. Service marks perform the same function for services and would be required to be registrable for the first time in an international agreement through the TRIPs agreement. According to the TRIPs agreement, "Any sign, or any combination of signs, capable of distinguishing the goods or services of one undertaking from those of other undertakings, shall be capable of constituting a trademark." TRIPs defines such signs as including personal names, letters, numerals, figurative elements, and combinations of colors, as well as any

[16]According to a GATT document, "new" inventions would also include inventions that had already been the subject of a patent application in another country either because they benefited from a priority period (normally 1 year) or because they had not been disclosed (patent applications are typically not published for 18 months after filing).

[17]Market exclusivity would not be required unless, after entry into force of the WTO agreement, a patent application had been filed and a patent granted in another country, and marketing approval obtained in that country.

combination of such signs, and provides that they shall be eligible for registration as trademarks.

Registered trademark owners would have the exclusive right to prevent others from "...using in the course of trade identical or similar signs for goods or service (sic) which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion." The use of a trademark would not be unjustifiably encumbered by special requirements, such as dictated usage with another trademark ("linking"), use in a special form, or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings.

While use of a trademark could not be a condition for filing an application, registration could be made dependent upon use. A first-to-register or a first-to-use system could be employed. However, protection against the improper registration of well-known trademarks and service marks would be enhanced by TRIPs' extension of a Paris Convention provision that establishes protection for well-known marks.

TRIPs would require that initial registration, and each subsequent renewal of the registration, be for a term of no less than 7 years. Registration of a trademark would be renewable indefinitely. If use were a requirement for maintaining a registration, the registration could be canceled only after an uninterrupted period of at least 3 years of nonuse. Compulsory licensing of trademarks would not be permitted, and the owner of a trademark would have the right to assign the trademark with or without the transfer of the business to which the trademark belongs.

Trade secrets (protection of undisclosed information). Trade secrets are proprietary information used in industry or commerce. Trade secret protection can encompass a broad range of manufacturing processes, testing, materials, and other know-how making up the most valuable resources a company has to license. Trade secret protection is regarded by U.S. companies as vital to the coverage of new technology, particularly technology that may not satisfy the rigorous standards of patentability.

TRIPs provides that trade secret holders could prevent their information from being disclosed to, acquired by, or used by others without their

consent in a manner contrary to honest commercial practices.[18] In addressing pharmaceutical and agricultural chemical test data that are submitted by firms to governments to demonstrate the safety and efficacy of pharmaceutical and agricultural chemical products that utilize new chemical entities, the agreement would require governments to protect the data against unfair commercial use.

Layout-designs (topographies) of integrated circuits. Layout-designs of semiconductor integrated circuits, also referred to as "mask works," are the patterns on the surface of a semiconductor chip. Because the designs of computer chips are easily copied, most developed countries have established a unique form of protection that combines copyright and patent principles.

The TRIPs agreement builds upon the WIPO Treaty on Intellectual Property in Respect of Integrated Circuits ("Washington Chip Treaty") by adding new provisions to raise the protection provided to the level afforded under U.S. law. Under TRIPs, it would be unlawful to import, sell, or otherwise distribute for commercial purposes "...a protected layout-design, an integrated circuit in which a protected layout-design is incorporated, or articles incorporating such an integrated circuit only insofar as they continue to contain an unlawfully reproduced layout-design" without the authorization of the rights holder.

No party would be considered to have violated the described protection by using an integrated circuit incorporating an unlawfully reproduced layout-design or any article incorporating such an integrated circuit where the party did not know, and had no reasonable grounds to know, that the layout-design was unlawfully reproduced ("innocent infringer"). However, innocent infringers would be required to pay a reasonable royalty for the disposition of stock on hand after receiving notice of the infringement. Compulsory licensing of semiconductor layout-designs would be limited to the terms previously enumerated on page 91. The required term of protection would be 10 years from the date of filing an application for registration or the date of first commercial exploitation, although a country could permit protection to lapse 15 years from the creation of the layout-design.

[18]A manner contrary to honest commercial practices means "...at least practices such as breach of contract, breach of confidence and inducement to breach, and includes the acquisition of undisclosed information by third parties who knew, or were grossly negligent in failing to know, that such practices were involved in the acquisition."

Industrial designs. Industrial designs are the distinctive and aesthetic aspects of product style and packaging. TRIPs would provide protection for independently created industrial designs that are new or original but would allow countries to refuse protection if the designs did not significantly differ from known designs. With respect to textile designs, countries would have to ensure that requirements for securing protection, in particular in regard to any cost, examination or publication, did not unreasonably impair the opportunity to seek and obtain such protection. Countries could meet this obligation through industrial design law or through copyright law.

The agreement's industrial design protection would prevent third parties from making, selling, or importing articles bearing a design that was a copy, or substantially a copy, of the protected design, when such acts were undertaken for commercial purposes. The duration of protection would be at least 10 years.

Geographic indications. The TRIPs agreement defines geographic indications as indications that identify a good as originating in a country's territory, or a region or locality in that territory, when a given quality, reputation, or other characteristic of the good is essentially attributable to its geographical origin. Examples of geographic indications include "roquefort" and "vidalia." Protection would be provided to prevent the use of any means in the designation or presentation of goods that would indicate or suggest that the good originated in a geographical area other than the true place of origin in a manner that would mislead the public about the geographical origin of the good.

Wines and spirits would receive special protection through the prohibition of the use of geographical indications identifying them even if accompanied by expressions such as "kind," "type," "style," "imitation" or the like, or even if, in addition, the true origin of the goods were indicated. However, previously used or registered geographic indications and trademarks that had been used in good faith before the date of application of the agreement, would be "grandfathered" from such protection. According to a U.S. negotiating official, geographic indications that have previously been used or registered as trademarks, or that have become generic through their use in designating types of wines such as champagne, chablis, or burgundy, would not be affected by the provision protecting geographic indications. However, a GATT official pointed out that countries would have to agree to enter into future negotiations that could address the continued applicability of such exceptions to protection.

Enforcement

International IPR agreements, such as the Berne and Paris Conventions, contain little in the way of obligations for enforcement of IPR. However, the TRIPs agreement contains detailed enforcement procedures. The agreement states that countries must ensure that enforcement procedures "...permit effective action against any act of infringement of IPR covered by this agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringement. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse." The procedures would have to be fair and equitable, not unnecessarily complicated or costly, and would not be able to entail unreasonable time limits or unwarranted delays.

The TRIPs agreement would establish minimum standards for due process.[19] Procedures could be either judicial or administrative in nature (although parties in a proceeding would have a right of judicial review of final administrative decisions). Decisions would have to be available to the parties without undue delay and be based on the evidence on which the parties were given an opportunity to be heard.

TRIPs would provide for civil and criminal enforcement. With respect to civil proceedings, the judicial authorities would have to have a combination of specified procedures and remedies at their disposal. The court would have to have the authority to order cessation of an infringement; stop importation; order payment of damages; order remuneration of the rights holder's expenses, which could include an appropriate attorney's fee; order the production of evidence (subject to protection of confidential information); deal with refusals by a party to allow access to relevant evidence without good reason; and deal with rights holders who abuse the procedures.

The TRIPs agreement mandates that judicial bodies would have the authority to order prompt and effective provisional measures to prevent infringement, to prevent entry of allegedly infringing goods into commerce, and to preserve relevant evidence. An applicant for such provisional measures would have to provide sufficient evidence to establish that the applicant was the rights holder and to persuade the court that the infringement was occurring or was imminent. The courts would have to have the authority to require the rights holder to post a

[19]The term "due process" refers to fair, reasonable, and orderly proceedings, including proper notice, the right to be heard, the right to be present before the tribunal that pronounces judgment, an opportunity to enforce and protect one's rights, and the right of controverting, by proof, every material fact that bears on the question or right in the matter involved.

bond (or give equivalent assurance) to protect the rights of the defendant and to prevent abuse of the provisional relief procedure. The courts would have to be empowered to order provisional measures in ex parte proceedings (i.e., where one party appears initially), in particular where delay was likely to cause irreparable harm or there was a demonstrable risk that evidence of infringement might be destroyed.

The TRIPs agreement also addresses enforcement at borders. Countries would have to adopt customs procedures to enable a rights holder who had valid grounds for suspecting imminent importation of counterfeit trademark goods or pirated copyright goods to present a written application to the competent authorities (administrative or judicial) so that customs authorities would suspend the release into free circulation of such goods. Goods that involved the infringement of other types of intellectual property rights could also benefit from these protections. The party petitioning for customs enforcement would be required to provide sufficient evidence to establish a prima facie case for infringement and to supply a detailed description of the infringing goods. With respect to certain kinds of allegedly infringing goods, the owner of the goods would have to have the right to obtain their release from customs by posting a security bond sufficient to compensate the rights holder, if infringement were found. The competent administrative authority would have to be empowered, subject to judicial review, to order destruction or disposal of such infringing goods.

Countries would have to provide for criminal procedures and penalties to be applied at least in cases of willful trademark counterfeiting and copyright piracy on a commercial scale. These criminal penalties would have to include imprisonment, monetary fines, or both, sufficient to deter infringement in comparison with other crimes of corresponding gravity. Countries could provide criminal penalties for infringement other than copyright and trademark violations, if the infringement were willful and on a commercial scale.

Dispute Prevention and Settlement

Countries would be required to publish laws, regulations, and final judicial or administrative rulings of general applicability to the subject matter of the TRIPs agreement. Countries would also have to notify the Council for Trade-Related Aspects of Intellectual Property of such laws and regulations. The mechanisms of the Understanding on Rules and Procedures Governing the Settlement of Disputes would apply to the TRIPs agreement. However, the provisions in the 1994 GATT agreement related to

"non-violation nullification and impairment" cases[20] would not apply to the TRIPs agreement for 5 years. This was one of two changes made to the draft TRIPs text created in 1991.

Transitional Arrangements

All countries would have 1 year from the entry into force of WTO to apply TRIPs provisions. Developing countries and countries in the process of transformation from a centrally planned economy into a market, free-enterprise economy would be entitled to a delay for a further period of 4 years, with the exception of the provisions addressing national treatment and MFN treatment. Developing countries would have an additional 5 years to meet TRIPs patent commitments in areas where they did not provide product patent protection on the date of application of TRIPs (e.g., for pharmaceuticals and agricultural chemicals in some developing countries—see previous discussion on p. 92). Least developed countries would have 10 years from the date of application to apply TRIPs commitments (again except for those provisions concerning national treatment and MFN treatment), and extensions could be granted. Because all countries would have at least 1 year to apply TRIPs commitments, this time period would translate into an 11-year total transition period for least developed countries.

Institutional Arrangements

A Council for Trade-Related Aspects of Intellectual Property Rights would be established. This council would monitor the operation of the TRIPs agreement (in particular country compliance with TRIPs commitments) and would be available for consulting countries on TRIPs matters.

Potential Impact of the Agreement

For the United States, the final TRIPs agreement should bring clear gains to intellectual property creators and, ultimately, consumers. However, the magnitude of the gains is not known and will accrue over time if the provisions of the TRIPs agreement are implemented. Trade in intellectual property takes place in several ways. The revenue from the sale of goods and services includes a return on any incorporated intellectual property, including product loyalty, technological sophistication, or reputation. If production is in the United States and the good is exported, the incorporated intellectual property contributes to U.S. employment. If production occurs through U.S. direct investment abroad, the returns from the transferred intellectual property are included in repatriated profits.

[20]Cases in which a country considered that its benefits from the agreement were being nullified or impaired, or the attainment of any objective of the agreement was being impeded, due to (1) measures applied by another country, whether or not they conflicted with the provisions of the agreement, or (2) the existence of any other situation. Essentially a violation of TRIPs commitments "in spirit," but not "in letter."

Intellectual property may also be sold or rented separately from the production of goods or services. In these cases, U.S. intellectual property owners receive royalties or licensing fees. Thus, the impact of the TRIPs agreement on the United States would depend in part on how U.S. intellectual property owners structured their trade in related goods.

The ITC report mentioned on page 86 suggested that many U.S. firms that actively participated in international trade faced losses from inadequate IPR in other nations. The improvements in IPR achieved in the GATT negotiations should benefit U.S. firms by increasing exports. Nevertheless, it appears that the direct domestic impact of improved IPR on employment would be small. However, the benefits of TRIPs could be understated if only the annual gains were estimated since improved IPR could provide dynamic benefits to the U.S. economy through increased innovation and growth.[21] To the extent that the TRIPs agreement would increase the rate of return on investment related to intellectual property, firms should devote more resources to developing intellectual property that could increase the rate of U.S. innovation and economic growth. Likewise, increased trade in ideas due to the TRIPs agreement could lead to faster long-term worldwide growth.[22]

In addition to the potential overall economic impact, the TRIPs agreement has been considered beneficial due to its "groundbreaking" nature. The agreement is the first comprehensive intellectual property agreement, i.e. it deals with all the main categories of intellectual property together and would be adhered to by over 100 countries.

Further, the TRIPs agreement has met many specific U.S. negotiating objectives, according to private sector advisory groups and the industry representatives we interviewed. The agreement contains high standards, often improvements of those in existing international conventions, and enforcement provisions that should serve to reduce piracy, counterfeiting, and other infringements of intellectual property rights.

Some commitments in particular are regarded as beneficial to U.S. interests. The copyright section of TRIPs recognizes important recent changes in technology by expressly requiring protection of computer

[21]See Edwin Mansfield, "Intellectual Property, Technology and Economic Growth," Intellectual Property Rights in Science, Technology, and Economic Performance, eds. Francis W. Rushing and Carole Ganz Brown (Boulder, CO: Westview Press, 1990), pp. 17-30.

[22]Luis A. Rivera-Batiz and Danyang Xie, "GATT, Trade, and Growth," American Economic Review, Vol. 82, No. 2 (May 1992), pp. 422-7.

programs, a key U.S. industry, as literary works under the Berne Convention (the goal of the industry). A representative of the sound recording industry said that his industry is pleased that provisions related to rental rights, reproduction, and the term of protection for sound recordings are contained in the TRIPs agreement. The TRIPs agreement failed to provide that all rights related to the protection of sound recordings would be subject to national treatment—see page 102.

Concerning patent protection, the pharmaceutical industry has praised TRIPs as the first worldwide agreement that would provide protection for pharmaceutical inventions. Significantly, product and process patents would be required under TRIPS, which was the industry's primary goal in the negotiations. This action has been viewed as an important first step to protecting the sizable research and development efforts of this industry; it is estimated that it takes an average of $359 million (1990 dollars) to bring one new pharmaceutical product to the market. Further, representatives of that industry (along with the semiconductor industry) said that the restrictions on the practice of compulsory licensing would be adequately strict and were pleased that compulsory licensing could not discriminate against any particular field of technology.[23] The provision that would require that importation be sufficient to satisfy local working requirements was also viewed as a significant advancement by industry representatives.

Private sector advisory committee reports we reviewed supported the enforcement measures in the TRIPs agreement. For example, the Industry Policy Advisory Committee report stated that border measures, which are contained in the agreement, are important for maintaining strong IPR enforcement. A representative of U.S. copyright industries said that the mandatory enforcement provisions (border measures and criminal penalties) would be strong enough to deter piracy activities in other countries.

Finally, the protection of new areas, such as trade secrets, has been viewed as groundbreaking by government and industry officials. A U.S. negotiator stated that protection for trade secrets is one of the most significant achievements in the TRIPs agreement. He also pointed out that this protection is based on U.S. standards as contained in the U.S. Uniform Trade Secrets Act.

[23]Canada and New Zealand had maintained discriminatory procedures on compulsory licensing for pharmaceuticals, but both countries have now dismantled their systems.

However, while the United States achieved many of its negotiating objectives, some private sector advisory groups have expressed concerns about what they view as inadequacies and omissions that could limit the effectiveness of the TRIPs agreement. For example, industry groups believe the transition periods granted to developing countries would be too long. Many benefits provided in the agreement might not be realized by U.S. interests for 5 or 10 years. A representative of the sound recording industry stated that countries do not need to develop a complicated infrastructure or specialized organizations for the granting and administering of copyrights; the right is created simply by virtue of the creation of the work. Therefore, in his opinion, 1 year would have been a sufficient transition period. Other noted problems with the TRIPs agreement addressed the following specific issues:

- Patent Issues. Pharmaceutical interests, although pleased that their industry would be granted product patent protection for the first time in a worldwide agreement, were concerned about the 10-year transition period for their industry. In congressional testimony, an industry official expressed concern over the discriminatory additional 5 years of transition for pharmaceuticals (and agricultural chemicals), which are one of the most competitive high-technology U.S. manufacturing industries. However, another pharmaceutical industry official indicated that while the discriminatory nature of the extension is disappointing, it is unclear what practical effects this 10-year delay would have on the industry. It normally takes 10-12 years to get a product approved and on the market, which may mean that by the time the product is ready for the market, patent protection would be available. This situation also calls into question the practical usefulness of the market-exclusivity provision, discussed under patent standards.

  The larger issue for the pharmaceutical industry may be the lack of protection for products in the "pipeline." These items have been patented but are not yet on the market because they are awaiting regulatory approval. Because TRIPs would only apply to inventions for which applications are filed after the effective date of the agreement (see fn. 16 for the situation regarding priority applications), inventions that have already been patented in the United States and other developed countries could not be patented in those developing countries that would have to amend their laws to meet the new standards. According to an industry official, this means that a whole generation of products would be "lost."

The permissible exclusion from patentable subject matter for plants and animals other than microbiological products and processes was considered by the biotechnology industry to be a failure in the agreement because it would allow exclusions of important areas. Biotechnology is an emerging industry in which the United States is a world leader. According to the Pharmaceutical Research and Manufacturers of America, of the 178 U.S. biotechnology patents for pharmaceuticals and healthcare products granted in 1992, 140 went to U.S. citizens or entities (companies, universities, etc.).

- Copyright Issues. The TRIPs agreement would not require strict adherence to the principle of national treatment. Derogations to national treatment would be allowed under TRIPs as provided for in the Rome Convention for the Protection of Performers, Producers of Phonograms, and Broadcasting Organizations. As a result, only those commitments explicitly mentioned in the text with respect to performers, producers of sound recordings, and broadcasting organizations would be guaranteed national treatment.

  Therefore, a discriminatory European practice that had been criticized by U.S. interests would not be corrected by the TRIPs agreement. European countries, such as France and Germany, have imposed levies on blank video and audio cassettes to provide compensation for the unauthorized copying of films and records on the blank tapes. According to a U.S. negotiator, the U.S. creative community does not receive its fair share of these levies even though much of what is being copied is of American origin. He said that while U.S. authors and/or composers, who are covered under the national treatment provisions of the Berne Convention, have been able to collect from the levy funds, U.S. performers, record companies, and movie companies that are termed "producers" in Europe have not. France, for example, has stated that U.S. performers are ineligible for funds from its video tape levy because there is no reciprocity (i.e., the United States does not have a similar levy system) and because the United States is not a party to the Rome Convention.

  Another point raised by European countries in denying U.S. film companies access to the video levy funds has been that they are classified as "videogram producers," and the rights of such "producers" are not covered by the Berne Convention nor by any other international convention, including the Rome Convention. They have also claimed that national treatment need not extend to "new" rights, such as the right to be compensated for private copying. U.S. interests are concerned that TRIPs is

unclear on the scope of national treatment in the "new" intellectual property areas such as those based on new technologies.

This lack of national treatment concerns the sound recording industry. A sound recording industry representative said that he was disappointed that TRIPs does not directly address or prohibit discriminatory treatment concerning the transmission of sound recording material in digital media. The digital transmission of sound recordings (such as by cable or satellite) is expected to become a principal means by which sound recordings will be made available to the public. Without national treatment, U.S. record companies could be denied payment for such uses by other countries.

- Dispute Settlement Issues. The 5-year moratorium against nonviolation nullification and impairment cases under TRIPs has caused concern among industry officials. This moratorium would not allow, for example, the United States to take to a dispute panel any country that failed to permit royalty transfer payments derived from the commercial exploitation of an intellectual property right. This provision would have been used against developed countries, as developing countries have at least 5 years to implement TRIPs provisions. A pharmaceutical industry official stated that nonviolation issues may be the "nontariff barriers of the future for IPR" and was unhappy that this provision may limit early benefits from developed countries. However, a U.S. negotiator pointed out that only a handful of nonviolation cases have ever gone to GATT dispute settlement. He further added that where a practice involved a denial of national treatment or MFN treatment, there would be no moratorium on bringing nonviolation cases under the 1994 GATT agreement, if the circumstances were appropriate.
- Continued Use of IPR-Related U.S. Trade Law. An additional issue raised by the Uruguay Round, unrelated to the TRIPs negotiations, concerned industries relying on strong intellectual property protection. These industries have expressed concern as to how unilateral tools that are used to improve intellectual property protection in other nations (such as Section 301), and that are largely considered to be effective, would be utilized in the future for areas covered or specifically excluded by the TRIPs agreement (see dispute settlement section). The United States has enacted legislation specifically to protect intellectual property, and the negotiation of the TRIPs agreement has made the use of these laws unclear to some. For example, the biotechnology industry has expressed concern that its specific exclusion from the TRIPs agreement would preclude the United States from bringing Section 301 actions against countries that declined to provide adequate protection for biotechnology inventions.

Further, potential restrictions on U.S. retaliation during the transition periods are being questioned by industry. Industry and government officials are unsure how the United States would unilaterally retaliate against a country that had expressly been given 5 or 10 years under TRIPs to implement the agreement's commitments. Industry representatives have stated that the United States would need to be clear in notifying other countries that areas not bound by GATT would be considered for unilateral retaliation against countries, during the transition periods and beyond, that did not provide for the adequate and effective protection of intellectual property. Industry officials believed such areas could include the Generalized System of Preferences or even nontrade areas such as decisions on granting visas. Further, industry representatives have encouraged the U.S. government to continue an invigorated strategy of negotiating IPR bilaterally, which could be used to correct TRIPs' weaknesses and reduce the transition periods.

Issues to Watch

Because intellectual property has been included in GATT negotiations for the first time, and as a result questions about future situations are unclear, monitoring may be needed in the following areas if the Final Act is implemented:

- communication and implementation of a strategy by the administration to address inadequate and ineffective protection of IPR, during the transition periods and beyond, including the scope of IPR issues to be addressed, the extent to which the United States would fully use existing trade laws such as Section 301, and the possible targeted areas for retaliation; and
- actions that developing countries take during the transition periods to ensure that they meet TRIPs commitments once the transition periods are over.

Agreement on Trade in Services

Background

Service industries dominate the U.S. economy and are important contributors to U.S. exports.[24] In 1991, they constituted about 62 percent of U.S. gross domestic product and nearly 57 percent of the U.S. civilian labor force. Although many services are not tradable, the service industry's share of U.S. exports is increasing. In 1980, private sector services constituted less than 15 percent of U.S. exports; by 1992, they accounted for about 28 percent.[25]

The U.S. service industry is also the world's largest exporter of services, accounting for about 21 percent of the $960 billion world trade in services market. In 1992, U.S. exports of private services reached $168 billion and yielded a $61 billion trade surplus.

International trade in services takes place through various channels, including

- cross-border transactions, such as the transmission of voice, video, data, or other information and the transportation of goods and passengers from one country to another;
- travel of individual consumers to another country (e.g., services provided to nonresident tourists, students, and medical patients);
- sales of services (e.g., accounting, advertising, and insurance) through foreign branches or other affiliates established in the consuming country; and
- travel of individual producers to another country (e.g., services provided to foreign clients by business consultants, engineers, lawyers, etc.).

Despite the importance of services to the U.S. economy and to international trade, the industry has operated almost entirely without multilateral trade rules to ensure market access and fair treatment for its services providers. The Uruguay Round negotiations marked the first

[24]Services, as defined in the Trade and Tariff Act of 1984 (P.L. 98-573, Oct. 30, 1984), consist of economic activities whose outputs are other than tangible goods, including businesses such as accounting, advertising, banking, engineering, insurance, management consulting, retail, tourism, transportation, and wholesale trade. The following 1991 statistics exclude the output and employment of government and government enterprises from the services sector.

[25]Howard Murad, "U.S. International Transactions, First Quarter 1993," Survey of Current Business, Vol. 73, No. 6 (June 1993).

attempt to address, through multilateral talks, unfair trade practices in the services sector. Until this round, GATT talks had focused solely on removing measures that restricted trade in goods.

The United States led the effort to include trade in services in the Uruguay Round negotiations. Overall, the United States allows more liberal access to its services markets than most of its trading partners. By way of comparison, governments of many other countries have felt free to discriminate against U.S. companies seeking access to their markets. By the early 1980s, the U.S. government, strongly supported by the U.S. services industry, began pressing to include services in multilateral trade talks. Despite extreme reluctance on the part of many developing countries to include services in these talks, the United States prevailed. In 1986, the Uruguay Round opened with a mandate to address trade in services. In 1989, the United States submitted the first comprehensive proposal for a services agreement.

U.S. Negotiating Objectives

In the Uruguay Round, the U.S. negotiating objectives were principally to give U.S. services exporters the same market opportunities overseas as U.S. trading partners have in the United States. This goal was to be achieved by establishing multilateral rules to govern trade in services and eliminating barriers to trade. While U.S. negotiating objectives, as cited in the U.S. Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418, Aug. 23, 1988), are similar to those in the 1986 Punta del Este Declaration, the 1988 Trade Act included the stated goal of eliminating foreign trade barriers. The 1986 declaration called for establishing a multilateral framework of principles and rules for trade in services and a "view to expansion of trade under conditions of transparency and progressive liberalization." Specifically, the objectives of the 1988 Trade Act were to (1) develop internationally agreed-upon rules, including dispute settlement procedures; and (2) reduce or eliminate barriers to international trade in services, including barriers that deny national treatment and place restrictions on establishment and operation in such markets.

Results of Uruguay Round

The United States achieved its objective of establishing international rules governing trade and investment in the services sector by gaining the General Agreement on Trade in Services (GATS). GATS is the first multilateral, legally enforceable agreement covering trade and investment in the services sector. For the first time, services would be subject to many of the same rules that cover trade in goods. The GATS framework, however,

is structured differently from GATT itself. For example, market access and national treatment are not automatically provided for, as they are in GATT. These two principles would become binding commitments only in services sectors that countries "schedule" in bilateral negotiations under GATT's auspices.

The United States achieved only partial success, however, in securing improved market access and national treatment for U.S. businesses. For example, while U.S. negotiators obtained favorable market access commitments from key countries in sectors such as business accounting and management consulting, construction and engineering information and computer services, enhanced telecommunications,[26] and travel and tourism,[27] they were unable to obtain adequate commitments from key countries in other important sectors. These sectors include financial, basic telecommunications, maritime,[28] and audiovisual services. In addition, many of the commitments obtained are "standstills" (i.e., pledges by a country to maintain the degree of market openness it had in place at the time of the negotiations and not to impose any new trade restrictions). While standstills are important because they represent binding commitments, some industries needed more market-opening commitments from their trading partners.

Multilateral Trade Rules Would Cover Services

GATS is the first attempt to bring international trade in services into the system of multilateral trade rules. For the first time, GATT countries would agree to extend multilateral rules to trade in services. Some of the most important rules would include those on MFN, transparency, monopolies, and recognition of operating licenses and qualifications.

GATS would also guarantee to U.S. firms the rights and benefits that would come into force with the signing of the Uruguay Round. For example, GATT dispute settlement rules would provide procedures for resolving disputes over services trade issues and enforcing binding obligations under the services agreement. Moreover, with the inclusion of services in the WTO, GATT dispute settlement rules would allow members to retaliate by putting restrictions on imports of goods when other member countries have

[26]Enhanced, or value-added, telecommunications includes services such as E-mail, data processing, and "store and forward" services.

[27]The travel and tourism industry includes businesses such as travel agencies, tour operators, tourism management services, hotels, restaurants, and sightseeing attractions.

[28]In the maritime negotiations, the U.S. maritime industries' unwillingness to negotiate was also a factor in the United States not obtaining improved market access commitments.

placed unfair trade restrictions on services exports. Since many countries, especially those in the developing world, may not be large exporters of services, the threat of retaliation against services alone may not be an effective deterrent; placing restrictions on those nations' merchandise exports may serve this purpose.

GATS Includes Three Major Components

GATS is comprised of three major parts: (1) a framework agreement that lays out a set of rules to govern trade in services; (2) schedules of country-specific commitments to liberalize markets on a sector-by-sector basis (without these scheduled commitments, market access and national treatment would not be assured); and (3) several annexes that interpret and would apply the rules of the general agreement to the movement of people across borders and to financial, telecommunications, and air transport services. These annexes also have ministerial decisions associated with them that would provide for further negotiations in several service sectors and a work program on professional services.

Only a few of the framework rules would automatically apply across all services sectors. For example, rules on transparency, economic integration, and recognition of professional credentials would apply to all GATS signatories whether or not specific sector commitments have been scheduled. The MFN rule would also apply across all services sectors, although countries would be allowed to take a onetime MFN exemption. However, other rules, such as those on domestic regulation, monopolies, and payments and transfers, would affect only those sectors in which a country schedules a commitment. In addition, once a country makes commitments in a particular sector or subsector, it would be bound automatically to the principles of national treatment and market access unless it cites reservations to these provisions (i.e., an unwillingness to abide by them) in its schedules of commitments.

Results Vary by Sector

While most U.S. service industries would derive overall benefits from the establishment of multilateral trade rules for services, the degree to which individual industry sectors would profit from the final Uruguay Round agreement depends on (1) which GATS rules most directly affect the industry, (2) whether key countries scheduled commitments, and (3) what the quality of these commitments is. For example, the agreement's across-the-board rules, particularly those on transparency, may be more important to small- and medium-sized firms entering overseas markets for the first time than the scheduling of sector-specific commitments by their

trading partners. Transparency would help ensure that U.S. firms have access to all laws, regulations, and international agreements that affect services sectors. For other services sectors, simply getting countries to schedule a sector-specific commitment, regardless of the degree of trade liberalization offered, is critically important: scheduling a commitment would allow many of the substantive rules to come into play. In addition, securing a standstill sector-specific commitment may be of considerable value to some industries because it would help assure that an open market would remain open. Standstills are particularly important to firms conducting business with countries that frequently change their domestic regulations and market access provisions.

However, other industries need, but did not get, sector-specific commitments from countries to remove market access barriers and end treatment that discriminates against foreign service providers. In the financial and basic telecommunications sectors, negotiations were extended in the hope of achieving a more favorable outcome for U.S. companies. Negotiations completely broke down between the United States and the European Union in the audiovisual sector, and no further negotiations are scheduled.

A Range of Industries Gained Significant Benefits From the Uruguay Round Agreement

According to industry advisory groups, including the Industry Sector Advisory Committee on Services (ISAC on services) and the Advisory Committee on Trade Policy and Negotiations (ACTPN), many industries within the business service sector, such as business accounting and management consulting, would gain significant benefits from the Uruguay Round agreement. In addition, construction and engineering, enhanced telecommunications, and travel and tourism service sectors, among many others, would substantially benefit from GATS.

Business Services. Fifty-two countries, including the 12 member states of the European Union, OECD countries, and 28 developed or newly industrialized countries scheduled commitments on accounting and auditing services. These countries constituted over 90 percent of the global market for these service sectors. In addition, 49 countries scheduled commitments in the management consulting area.

Because restrictions on cross-border payment of fees and other types of remittances is a principal trade barrier facing accounting and consulting firms, the GATS rule on payments and transfers, which would apply only when a country schedules a commitment, is critical to these firms. The rule on domestic regulation, which would also only affect those sectors in

which countries schedule commitments, is important to business service firms because it addresses discrimination in professional qualification and licensing requirements. Because of these rules, the accounting industry would benefit from any commitment a country may schedule, regardless of the degree of trade liberalization it offers. In addition, the ISAC report on services noted that although most accounting commitments would only be standstills, they are important because they would ensure that countries maintain the degree of market openness they have at the time the agreement is signed. He explained that some U.S. trading partners have reversed favorable market conditions and erected new trade barriers during the Uruguay Round negotiations.

GATS also includes a Ministerial Decision Concerning Professional Services, which would set an agenda for post-Uruguay Round work in the accounting industry. Accounting industry representatives believe that without a definitive agenda, countries may not act quickly on some GATS rules, such as those covering domestic regulation of the industry and recognition of professional credentials. The ministerial decision, drafted by the accounting industry, would mandate the establishment of a working party to

- develop multilateral rules to ensure that domestic regulations do not impede market access, but are based on objective and transparent criteria and are not so burdensome that they adversely affect the quality of service;
- facilitate the establishment of guidelines for the recognition of professional qualifications; and
- encourage the development and use of international standards.

While the ministerial decision would not require the adoption of international standards, it would raise the profile of the international standards effort and encourage governments to work toward developing international accounting standards in conjunction with appropriate international professional groups.

In 1992, revenues earned by accounting firms reached about $36 billion, and the industry employed approximately 525,000 Americans. In that same year, management consulting firms employed 620,000 people, and revenues grew to approximately $67 billion. U.S.-based accounting and management consulting firms operated more than 1,000 offices in over 100 countries. According to USTR, U.S. cross-border sales of accounting

services totaled $168 million in 1992, and according to USTR, U.S. firms were extremely competitive in all major markets.

Construction and Engineering. About 24 countries scheduled commitments in construction, and over half of all GATS signatories made commitments in engineering services. According to the ISAC report on services, these commitments appear to include some degree of trade liberalization in terms of market access and national treatment of U.S. firms. However, the report noted that more work needs to be done in construction and engineering industries to "equalize the benefits to the United States of foreign market access and national treatment." Overall, the GATS agreement is expected to make it easier for U.S. construction and related firms to compete for nongovernment projects in a world market estimated at $3 trillion annually.

The construction business is becoming increasingly international, and U.S. contractors continue to be leaders in international contracting. In 1992, cross-border sales were $2 billion and accounted for 1.2 percent of U.S. services exports. Foreign billings by U.S. designers (architects and engineers), including billings by foreign subsidiaries of U.S. firms, reached $4.6 billion in 1991.

Enhanced Telecommunications. Over 30 major trading partners made commitments to open their markets to foreign service providers of enhanced telecommunications. According to several industry advisory groups, U.S. trading partners offered liberalized market access commitments that would help lay the foundation for further liberalization in the enhanced telecommunications sector.

Moreover, the Uruguay Round would address for the first time in an international trade forum some of the longstanding problems that U.S. enhanced services providers face in trying to enter overseas markets. For example, foreign governments, wishing to protect a domestic telecommunications monopoly, often refuse U.S. enhanced service providers access to their markets. Furthermore, even when these countries grant access, U.S. company operators are often restricted because they are denied access to the host country's own telecommunications network. U.S. companies depend on in-country networks to deliver their enhanced services to customers.

Specifically, GATS includes a separately negotiated Telecommunications Annex to ensure that enhanced and other services providers would be able

to use the host country's telecommunications network. The annex would allow foreign service operators use of all available telecommunications services. Services providers would also be able to obtain and attach terminal equipment to the public network. Additionally, they would be able to use the telecommunications network of the host country to establish a communications network with the parent company and other branches and subsidiaries worldwide. Other U.S. firms dependent on telecommunications, such as banks, insurance, and travel firms, would also benefit from these provisions.

According to USTR, industry sources estimate that revenues for the U.S. domestic and international market would reach approximately $18 billion in 1994, or about 40 percent of the $45-billion worldwide market. In 1992, U.S. cross-border sales of telecommunication services were $3.3 billion, representing 2 percent of U.S. services exports.

Travel and Tourism. More than 30 countries scheduled commitments in the travel and tourism sector. However, according to the Travel Industry Association, only a few of these commitments reflected liberalized market access.

According to the ISAC on services report, the U.S. travel and tourism industry would benefit from the overall global trade liberalization achieved in the Uruguay Round. For example, industry representatives expect that tariff reductions and rules affecting investment and services would spur international travel and, in turn, create new opportunities for U.S. travel-related companies.

The travel and tourism industry is the largest services exporting sector in the United States, with revenues reaching about $54 billion in 1992 and accounting for 32 percent of U.S. services exports. This sector provided approximately 6 million American jobs, with 900,000 such jobs directly related to international tourism.

Negotiations Extended in Financial Services, Basic Telecommunications, and Maritime

GATS negotiations were extended in the financial services, basic telecommunications, and maritime sectors. Because these industries are highly protected and/or regulated, significant liberalization from U.S. trading partners does not currently exist to ensure market access opportunities for U.S. businesses overseas.

Financial Services. In financial services, the United States exercised its right of exemption from the GATS' MFN clause.[29] The sector, which includes banking, securities, insurance, and diversified finance companies (such as American Express), is one of the most open and competitive U.S. industries and contributes greatly to the U.S. economy. According to USTR, 1992 cross-border exports of financial services totaled $5.4 billion. According to the ISAC report on services, opening foreign markets for financial services would "strengthen one of the most competitive U.S. industries...and bolster U.S. economic growth."

U.S. negotiators, with the support of the financial sector, opted to take an MFN exemption when it became clear that key countries, such as newly industrialized countries in Asia and Latin America, would not make binding commitments to liberalize access to their banking and securities markets. According to industry representatives, most market access offers constituted a standstill or an even more restricted commitment offer. Several financial service industry representatives stated that standstill commitment offers are insufficient as the basis for a financial services agreement.

Although U.S. industry representatives were disappointed that key trading partners did not make adequate market commitments, they said they believed that by taking an MFN exemption, the United States would retain some leverage to prevent other countries from taking advantage of open U.S. markets while maintaining their own closed markets. Before the Uruguay Round agreement took effect, the MFN exemption would allow the United States to use trade remedies that are already law or to enact and use new trade laws. If the agreement is implemented, the MFN exemption would have to be suspended for 6 months. During this period, MFN treatment would be applied, and the United States would be prohibited from using any bilateral trade tools against specific countries. U.S. trade negotiators would be expected to enter bilateral trade discussions on market access and national treatment when the MFN exemption was in place and during the 6-month suspension period. If key countries do not commit to opening their markets, U.S. negotiators may opt to reinstate the MFN exemption. Industry officials hope that the U.S. threat to seek a more permanent MFN exemption would provide U.S. officials with leverage during these negotiations.

[29]The MFN exemption would affect only the banking and securities sectors. However, according to a U.S. government official, the exemption may be extended to cover insurance if more favorable commitments are not obtained during the extended negotiations.

The Fair Trade in Financial Services Act (S. 1527, 103rd Congress) could also provide leverage for U.S. negotiators. Under this act, which Congress is currently debating, the Secretary of the Treasury would be authorized to identify the extent to which foreign countries deny national treatment to U.S. banking organizations. If the Secretary determines that the denial of national treatment has had a significant adverse effect on U.S. banking or securities organizations, the Secretary could recommend that foreign financial firms' applications for licenses be denied. According to U.S. government officials and industry representatives, the threat of action under this act could give U.S. trading partners greater incentive to open up their markets. In addition, a USTR official noted that some key countries are currently considering reforming their domestic regulatory practices, which may lead to greater market access in these countries. However, he also said that because many of the newly emerging countries are not interested in establishing financial operations in the United States and are concerned that their own financial sectors may be overwhelmed by U.S. banks, there is little incentive for them to open their markets to the United States or other industrialized countries.

Basic Telecommunications. Government and quasigovernment monopolies are the primary servers of basic telecommunications services in many overseas markets. According to a USTR official, no real incentive existed for these countries to seriously negotiate in the area until very recently, when they began making some changes in their regulatory policies. An industry official of a large multinational U.S. telecommunications firm noted that many foreign governments are reluctant to open their markets to competition because they benefit greatly from their lucrative telecommunications industries. According to USTR, U.S. cross-border telecommunications exports were $3.3 billion in 1992.

Because of the U.S. telecommunications industry's concern that the U.S.' basically open telecommunications market would be bound by an agreement, while other governments would do little to open their own markets, negotiations in basic telecommunications did not begin until 1991. According to a USTR official, the United States did not receive adequate market access commitments from its major U.S. trading partners. An industry official noted that although telecommunications companies could gain some overall benefits from inclusion in GATS, U.S. firms need market-opening commitments from their trading partners. Without such commitments, U.S. companies would be unable to expand their overseas operations.

With the strong support of the telecommunications industry, U.S. negotiators agreed to extend until April 1996 multilateral negotiations on basic telecommunications. Countries participating in these negotiations include EU countries, Australia, Canada, Finland, Hungary, Japan, South Korea, Mexico, New Zealand, Norway, Sweden, Switzerland, and the United States.

The U.S. telecommunications industry was concerned, however, that U.S. trading partners would resist making any market access concessions until the April 1996 deadline is imminent. For this reason, they urged the U.S. government to use all means available to liberalize basic telecommunications markets, including pursuing bilateral arrangements. They also encouraged the United States to take an MFN exemption if significant liberalization is not achieved by 1996. Industry representatives were concerned that without an MFN exemption, U.S. trading partners would take advantage of the open U.S. market without liberalizing their own markets.

The telecommunications industry hoped the extended negotiations would achieve the following specific objectives: (1) the establishment of market access; (2) the presence of independent regulatory institutions with fair, transparent procedures; (3) the establishment of safeguards against unfair competition; and (4) the creation of nondiscriminatory, cost-based[30] accounting rates.

Maritime. During the final weeks of the Uruguay Round talks, U.S. negotiators withdrew the U.S. maritime offer because of the U.S. maritime industry's unwillingness to negotiate, and in response to inadequate offers by other countries. Japan and EU countries, among others, also withdrew their offers and agreed to extend negotiations on maritime market access and national treatment until June 1996.

The U.S. maritime industry strongly supported the U.S. decision to withdraw its offer. In addition, the industry was pleased that the United States made no commitments to limit the use of existing U.S. laws and programs promoting the U.S.-flag merchant marine.[31]

[30]Cost-based accounting rates are rates set by regulatory bodies that reflect the actual cost of services provided.

[31]For example, these laws require that all shipments between U.S. ports be carried on U.S. flag vessels, and provide preference to U.S. flag vessels for U.S. government shipments.

The primary U.S. negotiating objective is to "obtain a critical mass of countries" that would open their markets to match the degree of liberalization that exists in the United States. According to industry sources, the U.S. international maritime commerce is one of the most open and liberal in the world. Almost all land-based services are open to non-U.S. investment and use, and about 96 percent of U.S. ocean-borne export and import trade is carried by non-U.S. registered ships. According to USTR, the United States would make no commitments if other countries do not liberalize their markets.

Outcome in Audiovisual Sector Was a Disappointment

The industry most disappointed in terms of the overall benefits it received from GATS is the audiovisual sector. While this sector would benefit from the application of GATS rules, U.S. negotiators were unable to secure market access commitments from many key U.S. trading partners, most importantly the EU. EU countries provided more than half of the U.S. entertainment industry's $8 billion in foreign earnings. According to USTR, U.S. cross-border sales from film and video rentals totaled $2.5 billion, and earnings from intellectual property including broadcast and book rights amounted to $1.5 billion.

The dispute between the United States and the EU focused on a few key issues, specifically the European Broadcast Directive and video levies. The directive requires EU countries to ensure, where practical, that at least 51 percent of transmission time be reserved for European television programming. (This rule applies not only to current programming, but also to future broadcasting, such as pay-per-view programs and satellite transmission.) Moreover, the directive imposes no ceiling on these domestic content quotas, theoretically allowing member states to exclude most or all foreign programming. For example, France currently requires that 60 percent of its broadcast time be reserved for European programming. Other EU countries, however, have not enacted the directive's quota requirements.

Two days before the conclusion of the Uruguay Round negotiations, the EU rejected the final U.S. proposal, which, according to the ISAC report on services, represented a sharp scaling back of original U.S. demands. The offer would have allowed the EU to completely maintain its restrictions on both existing over-the-air broadcasting and future pay-per-view and satellite technologies. U.S. negotiators, however, wanted a change in the way the 51-percent European content provision is implemented. For example, the United States sought assurances that the 51 percent quota would be enforced over a 24-hour period, so that France and other

European countries would not be able to expressly exclude U.S. programming from prime time hours. In addition, the United States wanted quotas on new transmission technology, such as cable and satellite transmissions, to be interpreted in such a way as not to exclude the establishment of channels with purely American content.

Another point of dissension between the United States and the EU focused on EU taxes, or levies, on video rentals and sales of movie tickets. These levies, including those on sales of U.S. videos and movie tickets, are used to subsidize local European artists and performers. Initially, U.S. negotiators insisted that the levies on U.S. videos and movies be distributed to the U.S. entertainment industry. As the December 15, 1993, deadline drew closer, U.S. negotiators proposed that U.S. companies receive the revenue from these levies but use them to finance European-based productions, rather than simply returning to the United States. The EU rejected this final proposal.

U.S. industry representatives also noted that access to these markets is deteriorating. For example, in December 1993, the Spanish government adopted restrictions on movies that would drastically reduce foreign access to the Spanish theatrical market. In addition, France recently became the first European government to extend the local content quotas to radio, and Portugal recently passed a new film law that allows it to move toward the Spanish model and add local content quotas to the movie industry.

Notwithstanding the inability to secure market access and national treatment commitments from the EU, the agreement would provide some significant benefits for the audiovisual sector. For example, the audiovisual sector would be covered by GATS rules on MFN, subsidies, and progressive liberalization.[32] In addition, U.S. negotiators were able to ensure that, despite months of attempts by the EU to change the GATS text, GATS covers the audiovisual sector without any language regarding the role of culture in future negotiations on subsidies or progressive liberalization.[33] The EU wanted language stating that the objective of unconditional progressive liberalization would not be appropriate for this sector, given its cultural specificity.

[32]Article 19 of GATS calls for countries to commit themselves to subsequent rounds of negotiation "with a view to achieving a progressively higher level of liberalization."

[33]The EU desired to amend the GATS text to include a reference to the role of culture because of its position (1) that part of the EU's audiovisual services market can be subsidized by national governments in order to protect member nations' cultural identity and (2) that unconditional liberalization of this sector is not appropriate due to audiovisual services cultural importance.

U.S. negotiators were also able to secure market access commitments and national treatment from 14 countries. Although U.S. negotiators hoped to persuade more countries to schedule commitments, favorable commitments were made by Japan, South Korea, Malaysia, and Singapore. The United States also partially achieved its objectives of removing market barriers and improving intellectual property protection for these industries. No future negotiations were scheduled for this sector, although the industry is urging the establishment of a sectoral committee on trade in audiovisual services as part of GATS.

Potential Impact of Agreement

Determining the economic impact of the services agreement is very difficult. Most economic modeling assessments of GATT focused only on the effect that lower tariffs would have on U.S. merchandise trade and did not include trade in services. (Trade barriers to services are primarily nontariff barriers, such as domestic policies and regulations, and therefore are difficult to quantify.) Since the United States already has one of the most open markets for services, the agreement would lead to relatively small changes in U.S. barriers to imports, and result in only modest increases in imports as a result of those lower barriers.

Our evaluation of GATS was also hampered by the lack of available and adequate data on services. USTR negotiators, the ISAC report on services, and many economists noted that determining the economic impact of the Uruguay Round on the services industry was virtually impossible because complete and comprehensive data on services were hard to obtain and because the available data lacked detail (e.g., on specific services and international comparability). Collection of data was also difficult due to problems in separating domestic and international service transactions that are combined with exports of goods. For example, exported telecommunications equipment may include installation and maintenance services. In addition, rapid technological and organizational changes in the services industries impeded efforts to define, classify, and measure the activities. Finally, similar transactions may not have been reported consistently by all companies.

U.S. exporters, however, are in a position to benefit from the multilateral trade rules covering services. For example, GATS rules, such as those on transparency and payment and transfer of fees, would provide greater protection for U.S. firms exporting services worldwide. And U.S. services providers could use GATT dispute settlement rules to help them address unfair trade practices. In addition, binding commitments by U.S. trading

partners would offer U.S. exporters a greater opportunity to expand their businesses in many services sectors abroad. For example, a recent Economic Strategy Institute study estimated that U.S. services' exports would probably increase by $3 billion annually due to gains from the Uruguay Round by 2003. Finally, GATS would provide a workable foundation for future negotiations on services.

Issues to Watch

Because services is an area that has never been covered before in multilateral trade talks, the United States should be watchful of how

- major trading partners honor their scheduled commitments, including any specific market-opening measures;
- extended negotiations in the financial services, basic telecommunications, and maritime sectors evolve to ensure that countries commit to measures that liberalize their markets;
- the services working party (established by the Ministerial Decision Concerning Professional Services), develops rules related to domestic regulations, works toward international standards, and establishes guidelines for recognizing qualifications in the accounting industry; and
- deteriorating market access conditions in the audiovisual sector evolve, particularly in key countries such as those in the EU, and any future negotiations or talks develop in this sector.

Agreement on Trade-Related Investment Measures

Background

Many, primarily developed, countries believe that foreign direct investment (FDI) has a positive impact on the host country. However, while developed countries such as the United States believe that foreign investment flows should be largely directed by private market forces, developing countries have historically believed that FDI should be closely regulated by government. Because the multilateral rules governing the treatment of FDI were lacking, developed countries, particularly the United States, supported including investment in the Uruguay Round negotiations. Developing countries opposed the investment negotiations.

As a result of fundamental differences in outlook on whether or how to include investment in the UR, a compromise was reached that the focus of the investment negotiations would be narrow, addressing only investment requirements that affect trade in goods. Such requirements can stipulate, for example, that foreign investors must use local inputs in production or that imports for use in production by the investor will be limited.

The Role of Foreign Direct Investment

There is consensus among many, primarily developed, countries that FDI can have a favorable effect on a host country's economy. The U.S. Investment Policy Advisory Committee has pointed out that FDI can, among other things, create jobs, increase tax revenues, and introduce new technologies. A recent OECD analysis found that FDI increased host country wages and productivity and seemed to have a net positive effect on the competitiveness of the host economy.[34]

Recognizing the value of FDI and the importance of free markets, the United States has historically imposed relatively few restraints on inward investment. According to a 1983 White House International Investment Policy Statement, "...the United States believes that international direct investment flows should be determined by private market forces and should receive nondiscriminatory treatment consistent with the national treatment principle." However, the UR negotiations took place during a period of large increases in the value of direct investment flowing into the United States. The annual inflow of direct investment into the United States reached an all-time high of $67.7 billion in 1989. As a result, the U.S. government has increased its oversight of FDI in recent years,[35] although U.S. restraints that do exist on FDI are sectoral, specialized, and generally related to national security concerns.

The United States is an important source of and destination for FDI. FDI in the United States had an accumulated market value of $692 billion as of the end of 1992. The stock of U.S. direct investment abroad is larger, reaching $776 billion in 1992. In 1992, net FDI[36] inflows into the United States were only $2.4 billion, substantially lower than the 1989 high of

[34]"Foreign Investment Improves Industrial Performance of Host Countries," OECD Letter, Vol. 3, No. 3 (Apr. 1994).

[35]See, for example, the Omnibus Trade and Competitiveness Act of 1988, which grants the President the authority to suspend or prohibit foreign investment in the United States due to national security concerns. See also the Foreign Direct Investment and International Financial Data Improvement Act of 1990 (P.L. 101-533, Nov. 7, 1990), which improves U.S. government coordination of FDI data.

[36]Net FDI equals the value of any new FDI that enters the United States in 1 year minus any reductions in FDI in the United States in that year.

$67.7 billion previously mentioned. U.S. net direct investment outflows in 1992 amounted to $34.8 billion, down from the 1989 high of $36.8 billion.

According to a Department of Commerce review of FDI,[37] firms choose to expand their activities overseas for a variety of reasons. These reasons include a desire to (1) maintain profitability while reducing prices when faced with lower competitors' prices; (2) maintain or increase worldwide market share; (3) gain access to or retain access in an overseas market, especially in periods when trade restrictions are threatened; (4) exploit, and maintain control over, an advantage specific to a company such as management, marketing, and/or technology, or a comparative advantage in producing in the foreign market; and (5) improve the company's ability to meet the overseas market's needs by providing a special product design and/or service.

In contrast to developed countries, many developing countries have historically viewed FDI as something that should be closely controlled. According to a private sector publication detailing the Uruguay Round negotiating history, these governments have justified the regulation of FDI by a perceived need (1) to preserve sovereignty; (2) to shelter the development of indigenous enterprises; and (3) to maintain control over perceived outside pressures on a country's economic condition, particularly its balance of payments. In past years developing countries viewed FDI with suspicion, believing that it would create situations where a developing country could be exploited by multinational corporations. However, during the late 1980s, many developing countries began adopting a different philosophy and strategy toward FDI and developed policies to attract it. For example, according to a Treasury official, countries such as Argentina, Bolivia, Chile, and India are notable for the recent self-initiated actions they have taken to loosen restrictions on FDI.

Disagreement Over Whether and How to Include Investment in the Uruguay Round

Developed countries (primarily the United States) were interested in including investment issues in the UR negotiations. This interest was strengthened due to the fact that, despite the importance of FDI, the existing multilateral rules governing its treatment were lacking.[38]

[37]Foreign Direct Investment in the United States: Review and Analysis of Current Developments, U.S. Department of Commerce, Economics and Statistics Administration, Office of the Chief Economist (Aug. 1991), p. 9.

[38]There are two existing OECD investment instruments: (1) the investment declaration and related decisions on national treatment, international investment incentives and disincentives, and guidelines for multinational enterprises; and (2) the Code of Liberalization of Capital Movements. Both are considered lacking, according to U.S. officials, because they apply only to OECD member countries (i.e., developed countries) and have no dispute settlement mechanism. Further, the investment declaration is not a binding agreement.

Developing countries, however, resisted including investment in the Uruguay Round. These countries argued that investment issues (along with services and intellectual property) went beyond GATT's traditional jurisdiction.

A compromise was reached in 1989. Since GATT specifically covers trade issues, it was agreed that the investment negotiations would focus very narrowly on FDI regulations that require specific investor behavior that has an effect on trade. Such "trade-related investment measures" are referred to as TRIMs.[39] The United States had stated in a 1988 document submitted to GATT entitled "TRIMs: Characteristics, Costs and Alternatives," that "...TRIMs have economic effects that are comparable to those of traditional instruments of commercial policy, such as quotas, tariffs and subsidies, and should be subjected to some form of GATT disciplines where not already covered."

As suggested by this U.S. government position on TRIMs, the TRIMs negotiations were unique. Although investment was often referred to as a "new area" for the negotiations, some TRIMs are already covered by existing GATT articles. An example would be a regulation that restricts foreign investors from purchasing imports. Because such a regulation would favor domestic products over similar imported products, it would violate GATT article 3, which obligates contracting parties to accord national treatment to goods.

The desired approach to the TRIMs negotiations differed between developed and developing countries. Developed countries pressed for the express prohibition of certain TRIMs that violate GATT articles such as the national treatment provision. Developing countries, however, favored a different approach. Rather than outright elimination of TRIMs, developing countries favored subjecting TRIMs to an "effects test" discipline in which the distortive trade effects of TRIMs would be remedied if demonstrable, leaving the actual TRIMs intact. In the end, the negotiations took the "preemptive" approach of eliminating TRIMs, rather than remedying their effects on a case-by-case basis.

The Use of TRIMs

TRIMs exist in many forms. TRIMs include local content requirements (obliging an investor to purchase or use a specified amount of inputs from local suppliers). Local content requirements are the most common form of TRIM, and are used in an attempt to ensure that the investment increases

[39]In addition to prohibiting TRIMs, NAFTA addressed broader investment issues such as rights of establishment and transfer of profits.

local employment and develops physical and human capital. TRIMs also include trade-balancing requirements.[40] TRIMs are placed on FDI by governments in an effort to influence investment decisions such as sourcing, production, and market locations; to increase the likelihood that the host nation will capture the benefits expected from the investment; and to redistribute the investment benefits from the investor to the host country.

TRIMs can be implemented in different ways. TRIMs can be mandatory, that is, enforceable under domestic law or administrative rulings. An example of this type of mandatory TRIM would be a law that states that investors must include a certain percentage of local content in their production. In addition, TRIMs can be actions that are necessary for an investor to undertake in order to obtain some type of advantage (investment incentives)—a quid pro quo approach. For example, a host government might approach an investor with a proposal that allows the investor to receive a tax exemption in return for including a certain percentage of local content in the company's production.

According to a recent Department of Commerce Business America article, TRIMs such as those previously mentioned are inefficient because they skew market forces, reduce competition, result in the misallocation of resources, and raise costs for consumers. A 1991 U.N. study[41] of the impact of TRIMs on trade and development found that, although strategic trade theory suggests that governments can intervene successfully to shift production location and trade patterns to favor the home country, case studies of TRIMs showed both successes and failures in doing so. Additionally, the U.N. study found that if each host country independently pursued its own self-interest, all countries could be damaged unless they exercised mutual restraint.

During the UR negotiations, the United States provided a detailed discussion on the existing relationship (previously mentioned on p. 122) between TRIMs and GATT articles, and the effects of using TRIMs. For example, in a 1989 submission to GATT, the United States categorized TRIMs as those measures that have an adverse impact on trade by (1) artificially reducing imports, (2) artificially inducing or increasing exports, and

[40]Trade-balancing requirements allow an investor to import goods only up to a specified amount, which is determined by the investor's locally produced exports. Such requirements are used by governments in an effort to maintain or achieve a favorable balance of trade.

[41]The Impact of Trade-Related Investment Measures on Trade and Development, United Nations Centre on Transnational Corporations and United Nations Conference on Trade and Development, United Nations (New York, 1991).

(3) artificially reducing exports. Within each of these categories, the United States listed numerous, specific TRIMs[42] and the extent to which various GATT articles address these TRIMs.[43]

In 1989, USTR identified 49 developing and developed countries that used at least one TRIM and in which U.S. FDI was comparatively high. While both developed and developing countries use TRIMs, a greater number of developing countries implement them. However, according to a U.N. compilation of 1989 USTR survey data, the amount of U.S. direct investment abroad covered by TRIMs regulations is heavily weighted toward the developed world. For example, the 20 developed countries with the most extensive presence of TRIMs regulations were the recipients of $230 billion in FDI from the United States; the figure for the 20 developing countries with the most extensive presence of TRIMs regulations was $30 billion. The U.S. industries historically most affected by TRIMs include motor vehicles, chemicals, pharmaceuticals, and high-technology goods.

U.S. Negotiating Objectives

The Punta del Este declaration of the Uruguay Round stated that "[F]ollowing an examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, negotiations should elaborate as appropriate, further provisions that may be necessary to avoid such adverse effects on trade."

The 1988 Omnibus Trade and Competitiveness Act called for the following negotiating objectives for the United States: (1) to reduce or eliminate artificial trade-distorting barriers to foreign direct investment; (2) to expand the principle of national treatment; and (3) to reduce unreasonable barriers to investment establishment. The act also called for the development of internationally agreed-upon rules, including dispute

[42]TRIMs listed that artificially reduce imports related to (1) local content requirements, (2) trade-balancing requirements, (3) manufacturing requirements or limitations, (4) foreign exchange restrictions, (5) remittance restrictions, (6) technology transfer requirements, (7) licensing requirements, and (8) local equity requirements.

TRIMs listed that artificially induce or increase exports related to (1) export requirements, (2) product-mandating requirements, (3) trade-balancing requirements, (4) foreign exchange restrictions, (5) remittance restrictions, (6) manufacturing requirements, (7) technology transfer and licensing requirements, (8) local equity requirements, and (9) incentives.

TRIMs listed that reduce exports related to (1) domestic sales requirements and (2) manufacturing limitations.

[43]Listed TRIMs were viewed as either (1) clearly inconsistent with GATT articles or (2) not clearly inconsistent with GATT articles but nevertheless having significant trade effects. GATT articles listed as relevant to TRIMs (whether clearly or not) were those related to MFN treatment, national treatment, general elimination of quantitative restrictions, antidumping and countervailing duties, subsidies, and exchange restrictions.

settlement procedures, that would help to ensure a free flow of foreign direct investment and reduce or eliminate the trade-distorting effects of certain trade-related measures.

Results of the Uruguay Round

According to private sector advisory groups, the TRIMs agreement meets some U.S. objectives. The agreement, if implemented, would eliminate some trade-distorting barriers to FDI. It would not expand the principle of national treatment with respect to investment, but would explicitly prohibit specific TRIMs that are contrary to the principle of according national treatment to goods, as noted below. A Treasury official said that the agreement does not address other barriers pertinent to investment establishment such as limits on foreign equity participation or bans on foreign acquisitions in certain sectors. Thus, the agreement does not contain standard investment provisions, such as those contained in bilateral investment treaties or NAFTA, that help to ensure a free flow of FDI.

The TRIMs agreement would prohibit certain distortive TRIMs related to trade in goods. The agreement states that no country shall apply a TRIM that is inconsistent with GATT articles III (national treatment) and XI (general elimination of quantitative restrictions, such as quotas).

An annex to the TRIMs agreement provides an illustrative list of TRIMs that are inconsistent with these two GATT articles and so would be prohibited. Measures listed as inconsistent with the GATT's article III provision of national treatment are local content and trade-balancing requirements, as previously discussed. Measures listed as inconsistent with the GATT's article XI prohibition of quantitative restrictions are those that (1) require trade balancing, (2) require foreign exchange balancing,[44] and (3) limit exports.[45] These TRIMs could not be used in either a mandatory or an incentive form.

Countries would be required to notify the Council for Trade in Goods, within 90 days of the entry into force of WTO, of all TRIMs they are applying that are not in conformity with the TRIMs agreement. For all TRIMs that are so reported, developed countries would be required to eliminate them within 2 years, while developing countries would have 5 years, and least

[44]A foreign exchange balancing requirement restricts a company's imports by limiting the company's access to foreign exchange to pay for the goods to some proportion of the amount of foreign exchange earned by the company.

[45]An exporting restriction limits company exports, or sales for export, by placing restrictions on particular products, a volume or value of products, or a proportion of the volume or value of the company's local production.

developed countries would have 7 years. With the approval of the contracting parties, extensions could be granted for developing and least developed countries.

TRIMs that were not notified, or that were introduced 180 days before the entry into force of WTO, would not benefit from these transition periods and would be required to be eliminated immediately. All exceptions under the 1994 GATT agreement would apply, as appropriate. Developing countries would be allowed to deviate temporarily from TRIMs agreement commitments for balance-of-payment reasons, though only to the extent permitted in the 1994 GATT agreement.

The TRIMs agreement contains a provision concerning "competitive disadvantage." This provision would allow countries to apply existing TRIMs to new investing firms for the duration of the transition period when (1) the products of such investment were similar to the products of the established enterprises and (2) it was necessary to avoid distorting the conditions of competition between the new investment and the established enterprises.

The TRIMs agreement would ensure transparency, including (1) as provided for in GATT, (2) with respect to notification of publications in which TRIMs may be found, and (3) in considering requests for information or consultations from other countries. Investment consultations and dispute settlements would come under the new Understanding on Rules and Procedures Governing the Settlement of Disputes. Finally, a Committee on Trade-Related Investment Measures would be established to monitor the operation and implementation of the agreement and to report annually to the Council for Trade in Goods. The Council for Trade in Goods would be required to review the operation of the agreement and consider proposals for amendments to its text not later than 5 years after the entry into force of WTO. The council would also be required to consider whether to complement the agreement by establishing provisions on investment policy and competition policy.

Potential Impact of the Agreement

The potential impact of the TRIMs agreement on the United States can be viewed from the standpoint of a U.S. multinational corporation and its shareholders or from the perspective of U.S. labor or a U.S. domestic firm. According to the Congressional Research Service, most large corporations view investment liberalization as an important goal for trade negotiations because at the margins it gives them greater flexibility in locating their

production facilities and the opportunity for greater profits. According to a Treasury official, the agreement would allow companies to make more rational choices regarding sourcing and exporting, rather than making such decisions based on government mandate. Thus, U.S. multinational corporations and their shareholders should benefit from the TRIMs agreement.

The impact of the TRIMs agreement for U.S. domestic business and workers is somewhat uncertain. If the TRIMs agreement led to increases in U.S. direct investment in foreign markets, it is unclear to what extent this increase would have come at the expense of investment and employment in the United States. A similar question was raised in the NAFTA debate.

The U.S. Department of the Treasury has analyzed the investment effects of the overall GATT agreement. The Treasury concluded that investment in the United States would increase, including FDI, as some industries expand. In addition, U.S. direct investment abroad would increase due both to emerging markets and an improved investment regulatory environment. Further, the Treasury expected global portfolio capital flows to increase as world income and savings grow. The magnitude of these capital outflows and inflows on the U.S. economy are not reported. The Treasury found that the Uruguay Round would result in increased levels of world output, trade, real income, savings, investment, and consumption.

The potential impact of TRIMs on U.S. employment could be felt through multiple channels. A U.S. Treasury negotiating official said that U.S. employment could potentially be bolstered as a result of the TRIMs agreement for two reasons. First, if restrictions on investors are loosened, U.S. companies may make investments that they would not have made if the restrictions were in place, and in doing so may increase U.S. exports by drawing in U.S. goods for use in production. Second, because the agreement would eliminate requirements such as local content, U.S. firms operating abroad would be free to use U.S. goods. The Treasury official stated that these two possibilities are based upon the tendency for U.S. subsidiaries abroad to rely upon and create U.S. exports.[46]

Empirical evidence that links U.S. direct investment abroad with increases in U.S. exports and subsequent employment is limited. According to a Department of Commerce official, many studies have tried, with inconclusive results, to determine the relationship between foreign direct

[46]In 1991, 24 percent of total U.S. exports of goods and services went to foreign affiliates of U.S. companies. In the same year, U.S. content (U.S. merchandise exports) accounted for 9 percent of the total output of majority-owned foreign affiliates of U.S. companies.

investment and exports from the home country. Moreover, for limits on the use of TRIMs abroad to have a significant impact on the U.S. economy, they must currently substantially affect business behavior and trade flows. If existing TRIMs have only a limited impact on current trade flows and production, the agreement to restrict TRIMs would have a limited effect on the U.S. economy.

During the 1980s, many developing countries unilaterally reduced their use of TRIMs. In those countries where TRIMs still exist, they may have a limited impact on business decisions if they are negotiable or discretionary. Likewise, if TRIMs simply require companies to do what they would have done in any event, a reduction in their usage would have little effect on the U.S. economy. Empirical evidence that TRIMs significantly distort trade flows is limited and inconclusive, though their potential for distortion is not disputed.[47] Additionally, case studies and surveys of firms subject to TRIMs have mostly found that TRIMs have a minor impact on business behavior.[48]

The potential impact of the TRIMs agreement on U.S. government actions should also be noted. One implication of the agreement is that various congressional proposals in recent years to place performance requirements on FDI would be prohibited. These proposals have included requirements that foreign investors manufacturing in the United States use U.S.-produced parts or adhere to other requirements for domestic sourcing and content. (One U.S. official pointed out that such proposals were not successful.) A U.S. negotiating official pointed out that such restrictions have the negative effect of distorting trade, thereby harming trade partners. The TRIMs agreement could lessen the U.S. government's ability to influence the operations of foreign based multinational corporations, if the government should desire to do so in the future.

While the potential overall economic impact of the TRIMs agreement is uncertain, many observations have been made concerning the specific strengths and weaknesses of the agreement's provisions. The TRIMs agreement is generally supported by U.S. private sector advisory groups who claimed that, although the agreement would only meet some U.S.

[47]Rachel McCulloch, "Investment Policies in the GATT," World Economy, Vol. 13, No. 4 (Dec. 1990). For a discussion of the difficulties in conducting this empirical analysis, see Keith E. Maskus and Denise R. Eby, "Developing New Rules and Disciplines on Trade-Related Investment Measures," World Economy, Vol. 13, No. 4 (Dec. 1990).

[48]These studies are summarized in The Impact of Trade-Related Investment Measures on Trade and Development.

objectives, U.S. investors would be better off with the agreement than without it.

In identifying benefits of the agreement, U.S. officials stated that the prohibited TRIMs are still in use in many countries; thus, their elimination would provide real benefits to investors. For example, according to Business America, Pakistan imposes a 75-percent local content requirement for motor vehicles. India imposes a requirement on consumer goods and "nonpriority" industries that foreign exchange inflows and outflows be balanced during the initial 7 years of the investment. A Treasury official said that the only TRIM that U.S. negotiators had realistically hoped might be included on the illustrative list but that was not was export performance. Export performance requires investors to export a certain quantity or value of their production.[49]

In addition, the competitive disadvantage clause (discussed on p. 126) is considered to be quite important to existing U.S. investors in other countries, particularly the U.S. auto industry, that are already subject to TRIMs and would have been harmed if new investors had not been made subject to the same restrictions. Further, the prohibition of incentive TRIMs is considered a success for the United States. A U.S. official pointed out that developing countries are particularly unhappy with this prohibition.

According to U.S. officials, the greatest advantage of the TRIMs agreement may be that it would be a "foot in the door" to address investment in the multilateral GATT forum. This would be the first multilateral investment agreement to have "teeth" in that a formal dispute settlement mechanism would be in place that would allow for retaliatory action. The list of prohibitions is "illustrative," which means that it does not list every TRIM that could violate GATT articles III and XI, and, therefore, more TRIMs could potentially be added to the list over time.

In addition, U.S. officials expressed hope that the scope of the agreement could be expanded with the mandated review of the operation of the agreement in 5 years. This review could include broader discussions on investment policy.[50] It was also considered necessary by negotiators to work to eliminate TRIMs on a multilateral, rather than a bilateral, basis. A

[49]However, the subsidies agreement would prohibit the granting of subsidies contingent upon export performance.

[50]These future discussions could also include competition policy. This issue was a priority for developing countries. These countries want to prohibit multinational corporations from engaging in restrictive business practices.

Commerce Department official explained that in order to effectively eliminate TRIMs, all countries must cooperate. One country would be hesitant to stop offering incentives if other countries continued to offer such incentives and thereby attract foreign investment. Further, taking individual countries to dispute settlement to settle investment problems can be expensive and require years of effort to resolve; under the TRIMs agreement, all countries would be required to identify existing TRIMs and remove them, with no action required on the part of the United States. In contrast, the U.S. investment regime is largely in line with TRIMs provisions and so would require few changes.

While the agreement contains benefits, there has been concern over the scope of the agreement's provisions. The Investment Policy Advisory Committee was disappointed that many distortive TRIMs would be allowed to continue, and the Advisory Committee on Trade Policy and Negotiations exhibited surprise that other countries continue to support the use of TRIMs. The final compromise TRIMs agreement would eliminate only a few of the TRIMs that were raised by U.S. officials during the negotiations, and so the U.S. attempt to address TRIMs on a wide scale was ultimately not successful. According to the Investment Policy Advisory Committee, "[T]he TRIMs negotiations were an area where the United States attempted to take bold strides toward a more open world investment system, and the rest of the world unfortunately failed to follow."

The narrow focus of the final agreement was considered particularly disappointing by private sector advisory groups because FDI requirements related to areas such as equity ownership, export performance, and technology transfer were prohibited in NAFTA (although a U.S. official responded that it is much easier to get 3 countries to agree than over 100). In addition, while applying national treatment to prohibit specific TRIMS, the agreement does not provide for national treatment to be applied to foreign direct investors in general.[51]

According to its report, the Investment Policy Advisory Committee does not oppose the Uruguay Round, but maintains that the TRIMs agreement was not a major success. It has proposed that, due to the difficulties encountered during the TRIMs negotiations, the United States concentrate its resources outside GATT in pursuing future investment initiatives. The Investment Policy Advisory Committee has proposed that the United

[51]GATS, however, covers investment issues for service industries. Service providers, who must often have a commercial presence in the country where the service is being provided, would be guaranteed some investment rights. These rights would include broad national treatment and market access for service sectors in which countries expressly chose to make commitments.

States (1) expand NAFTA, whose investment provisions are considered excellent; (2) continue negotiating bilateral investment treaties; and (3) use its membership in OECD to foster improved treatment of foreign direct investment. A GATT official responded to the Investment Policy Advisory Committee's proposal by stating that if the TRIMs negotiations were to take place in today's more favorable environment for foreign investment, the results would no doubt be more substantial. Moreover, he added, the GATS negotiations have shown that investment issues can be productively addressed in the GATT/WTO framework.

Areas Receiving Greater Coverage

Four areas received greater coverage in the Uruguay Round than they previously had: agriculture, textiles and clothing, government procurement, and trade and the environment. Attempts to reform agriculture in previous GATT rounds were neither as comprehensive nor as successful as the agreement achieved in the Uruguay Round. Although textiles and apparel trade is governed by the Multi-Fiber Arrangement under the GATT aegis, the Uruguay Round presents a plan to fully integrate this industry into the GATT rules and procedures. Doing so, however, would also expose the U.S. textile and apparel industry to increased foreign competition, which could result in significant job losses.

The Government Procurement Code established during the Tokyo Round would be broadened in the Uruguay Round to cover services, construction, and more federal-level entities. Although not part of the Uruguay Round's original objectives, another issue receiving greater attention was trade and the environment. The relationship between the GATT provisions and environmental protection has increasingly come to the forefront as world policy makers pursued the parallel goals of liberalizing international trade and preserving the environment.

Agriculture Provisions of the Uruguay Round

Background

Governments in the United States, Europe, and elsewhere have supported and protected their agriculture sectors since the Great Depression, primarily to ensure adequate food supplies, to provide farmers sufficient income, and to stabilize domestic commodity prices. Over time, however, government intervention has undermined the normal interaction of market forces in the agriculture sector—domestic price and income supports encouraged excessive production, surpluses had to be exported to world markets, and oversupply depressed world prices. Many governments protected domestic producers by banning or controlling imports, measures that further restricted trade.

While farmers in many countries have benefited from government support and protection, these policies have other undesirable effects. First, the increasing cost of government programs is a burden on consumers and taxpayers. According to OECD, the cost of agricultural support in the industrialized countries has increased significantly since the early 1980s.

OECD figures show that agricultural support in 22 industrialized countries[1] rose from an average of about $98 billion per year during the period 1979-1986 to an estimated $163 billion in 1993.[2] Second, government intervention by the developed countries has made it difficult for developing countries to compete in agricultural trade—and yet, the economies of many developing countries are based on agricultural products.[3] Finally, some economists have asserted that government policies related to agriculture have generally impeded economic growth by restricting trade.

GATT has been an ineffective forum to address such policies because agricultural trade is subject to special treatment. GATT rules have permitted a wide range of nontariff barriers in agricultural trade, such as import quotas. GATT rules have also permitted agricultural export subsidies which are generally not permitted for trade in manufactured products.[4] As a result, countries have maintained domestic policies that adversely affected agricultural producers in other countries, causing a proliferation of trade disputes. However, according to U.S. trade officials, because the rules allowing more lenient treatment of agricultural policies lack clarity, such disputes have been extremely difficult to resolve.

The Uruguay Round represented the first time that GATT contracting parties undertook to substantially reform agricultural trade.[5] The Punta del Este ministerial declaration recognized an urgent need to stabilize the world agriculture market and liberalize trade by reducing import barriers,

[1]The countries reported on included Australia, Austria, Canada, the EU, Finland, Japan, New Zealand, Norway, Sweden, Switzerland, and the United States.

[2]OECD uses the producer subsidy equivalent to measure the value of the monetary transfers to producers from consumers of agricultural products and from taxpayers resulting from a given set of agricultural policies. These figures were reported in Agricultural Policies, Markets and Trade: Monitoring and Outlook 1994, OECD, Directorate for Food, Agriculture and Fisheries, Committee for Agriculture (Paris: June 1994).

[3]According to OECD, agricultural production in developing countries accounted for an average of 15 percent of their GDP, 57 percent of employment, and a significant part of their merchandise exports. See Ian Goldin and Dominique van der Mensbrugghe, Trade Liberalization: What's At Stake?, OECD Development Centre, Policy Brief No. 5 (Paris: 1992).

[4]GATT article 11 generally prohibits quantitative restrictions, such as quotas and import or export licenses. However, it allows countries to maintain import restrictions on agricultural products to enforce policies that restrict domestic production. GATT article 16 generally prohibits the use of export subsidies. However, this article, in conjunction with the GATT subsidies code developed during the Tokyo Round, has allowed export subsidies on agricultural products provided such subsidies do not allow a country to acquire more than an equitable share of world export trade in the subsidized product.

[5]Attempts were made to address agricultural trade in the Dillon Round (1960-62), the Kennedy Round (1963-67), and the Tokyo Round (1973-79). While the scope of these efforts was not as broad as the Uruguay Round negotiations on agriculture, they did provide limited improvements in agricultural trade.

disciplining the use of direct and indirect subsidies that affect trade, and minimizing the adverse trade effects of sanitary and phytosanitary regulations and barriers.[6] The declaration recognized that other negotiating areas were likely to improve agricultural trade as well, such as efforts to strengthen the dispute resolution process.

While most countries agreed that reforming agricultural trade was important, their specific interests varied according to domestic needs. The United States, for example, faced decreasing exports, increasing imports, and rising government expenditures on farm programs during the early 1980s. As the largest agricultural exporter, the United States was interested in gaining more access to other countries' markets and improving world competition by curtailing subsidized exports of agricultural products. The U.S. negotiating position was generally aligned with that of the Cairns Group, a group of 14 countries whose governments generally do not provide internal support or export subsidies.[7] The European Union, a large importer and exporter of agricultural products, was generally interested in protecting domestic producers and guarding its share of world exports. However, some EU member states wanted to reduce the ever-increasing cost of EU farm programs.[8] Some countries, such as Japan and South Korea, supported reform but did not want to lower the market access restrictions that protect their domestic producers. Finally, developing countries that were net food importers were concerned that reform would increase the cost of food.

U.S. Negotiating Objectives

The United States advocated substantial and meaningful agricultural reform in the Uruguay Round. Some countries agreed with the United States and made their support of a new GATT agreement contingent on achieving significant agricultural trade reform. Others, notably the EU, favored more gradual reform. The fundamentally different perspectives of the United States and the EU prolonged negotiations and heavily influenced the ultimate structure and degree of reform. In the end, all countries' objectives were modified by compromises and political considerations.

[6]Sanitary and phytosanitary regulations and barriers are measures taken to protect human, animal, or plant life or health.

[7]The Cairns Group consists of 14 countries that are exporters of agricultural products: Argentina, Australia, Brazil, Canada, Chile, Columbia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, the Philippines, Thailand, and Uruguay.

[8]The EU supports farmers through the Common Agricultural Policy. In 1992, the Common Agricultural Policy cost 36 billion European currency units (about $30 billion at the 1992 year-end exchange rate of $1=1.19 European currency units) and accounted for almost 60 percent of the EU's 1992 budget.

Throughout the negotiations, the United States sought disciplines in four major areas: (1) market access, (2) export subsidies, (3) internal support policies, and (4) rules governing sanitary and phytosanitary measures. The first U.S. proposal, called ambitious by many countries, recommended eliminating, over a 10-year period, all market access restrictions and subsidies that distort trade and harmonizing worldwide food health regulations. According to some U.S. commodity and farm group representatives, the original U.S. proposal was probably not attainable as most GATT members were not supportive of it. Subsequent U.S. proposals continued to recommend specific measures in each of the four areas, but focused on substantially reducing government support and protection rather than eliminating it.

U.S. objectives differed significantly from those of the EU. The first EU proposal recommended short-term measures to stabilize agricultural trade in certain commodities, followed by a gradual reduction in government support. The EU also proposed harmonizing health and sanitary regulations pertaining to animals and plant products. A subsequent proposal indicated the EU was willing to make modest reductions in internal support, but was not interested in reducing market access restrictions and export subsidies.

The objectives of other major parties generally lay between the U.S. and EU objectives. The Cairns Group supported the United States and proposed removing all trade-distorting policies, eliminating nontariff barriers, allowing only very low tariffs, and strengthening GATT rules and disciplines for agriculture. Some countries proposed reducing, but not eliminating, government support and protection. For example, Japan proposed removing only export subsidies and improving the rules governing market access, and resisted agreeing to any imports of rice for cultural and food security reasons. Developing countries that import food asked for special treatment to meet their development, trade, and financial needs.

Although agriculture negotiations affected many countries, the United States, the EU, and the Cairns Group evolved as the key players. As the UR progressed, the two countries continued to disagree about how to reform agriculture trade. The UR was originally scheduled to conclude in 1990; however, the lack of agreement on agriculture prevented this event, and negotiations were temporarily suspended.

Negotiations began again in 1991, when the GATT Director General proposed an agreement for agricultural reform as part of the Dunkel text. The agreement contained specific commitments in the four major areas, as

advocated by the United States, but suggested less substantial reductions in market access restrictions, export subsidies, and internal support. All countries accepted the Director General's proposed agreement as the basis for further negotiations. The United States and the Cairns Group generally supported the text as written; the EU, Japan, and others said the text was unacceptable without certain changes.

From 1991 to 1993, debate centered on several key issues:

- Reducing market access restrictions. The Director General proposed that countries convert all nontariff barriers to tariff equivalents—a process called "tariffication"—and reduce new and old tariffs by an average of 36 percent. The United States and the EU differed on what methodology to use to calculate tariff equivalents and how reductions in tariffs would be implemented. Japan and South Korea resisted converting their import bans on rice to tariffs. Canada also resisted tariffication for certain commodities.
- Reducing export subsidies. The Director General proposed that countries reduce the volume of subsidized exports by 24 percent and budgetary expenditures on export subsidies by 36 percent. The United States said both measures were necessary to achieve meaningful reform, but the EU opposed the volume-based reduction.
- Reducing internal support. The Director General proposed that countries reduce domestic support that affects trade by 20 percent. The EU wanted to exempt domestic support linked to production-limiting measures from this requirement.
- Other issues. The United States and the EU disagreed on many other issues, such as the base period from which reductions could be made, the implementation of reductions at an aggregate or commodity-specific level, and the question of whether countries should agree not to initiate trade disputes while the reform measures were being implemented.

Other events were occurring simultaneously outside the Uruguay Round that influenced U.S. and EU negotiating positions. The United States wanted the EU to address the reports of two GATT panels that found that EU policies negatively affected U.S. exports of oilseeds to the EU.[9] Meanwhile, EU member states were undertaking the politically difficult task of reforming the EU's Common Agricultural Policy. The United States feared

[9]In 1989, a GATT panel review of the EU's oilseed support regime found that the effect of such support nullified the EU's agreement in a previous GATT round not to apply tariffs to oilseed imports. After the EU implemented its new oilseed support regime in 1991, a second GATT panel found in March 1992 that the revised system also effectively nullified the previously agreed-to tariff concessions.

that Common Agricultural Policy reform, finalized in June 1992, would dictate the outcome of the Uruguay Round.

According to U.S. trade officials, the United States and the EU held difficult bilateral negotiations in November 1992 and November 1993 to address their differences on the Director General's proposed agreement (the Dunkel text), the GATT reports on oilseeds, and the extent to which the EU's Common Agricultural Policy reform was compatible with international agricultural reform. As a result of these meetings—called the "Blair House Accords"—the United States and the EU agreed to make certain changes to the Dunkel text. The major changes included decreasing the percent by which export subsidies would be reduced (from 24 to 21 percent), making internal support reductions at an aggregate rather than a commodity specific level, and exempting certain types of internal support from any reductions. While the other major parties did not agree with some of these proposed changes, they accepted them for practical reasons—no agreement on agricultural reform would be possible without the support of the United States and the EU. Additional changes were made to accommodate the political needs of certain countries. After 7 years, the UR negotiations on agricultural reform were completed.

Results of the Uruguay Round

A variety of measures to liberalize agricultural trade would be implemented as a result of the Uruguay Round. First, the Agreement on Agriculture would require countries to make specific reductions in three types of support—market access restrictions, export subsidies, and internal support—over a 6-year period beginning in 1995. Developing countries would be subject to more lenient treatment than developed countries. Second, the Agreement on the Application of Sanitary and Phytosanitary Measures contains disciplines on the use of measures to protect animal and plant health. Third, countries agreed to establish a Committee on Agriculture that would provide a forum for discussing countries' agricultural policies. Finally, to demonstrate their commitment to agricultural reform, countries agreed to enter a second phase of negotiations 1 year before the implementation period would end.

In the four major areas of interest to the United States, the Final Act contains the following provisions.

Market Access Restrictions

Significant achievements in the area of market access restrictions would include the conversion of all nontariff barriers to tariff equivalents; the reduction of new and old tariffs; and a complete binding, or freeze, on all

agricultural tariffs. Japan and South Korea agreed to convert their rice import bans to tariffs, but would be granted more time to complete the conversion; in exchange for this leniency, they agreed to accept rice imports above the minimum that would be required by the Final Act. In addition, negotiations on reductions in tariffs will provide new export opportunities for a variety of U.S. commodities.

The Final Act contains the following provisions on market access restrictions:

- Countries shall convert nontariff barriers to tariff equivalents (called "tariffication").
- Countries shall reduce old and new tariffs by a simple average of 36 percent, with a minimum 15-percent reduction in each tariff (24 percent average and 10-percent minimum cuts for developing countries).
- Reductions in old tariffs will be measured from the 1986 level, while reductions in new tariffs will be measured from the average 1986-88 level. Reductions will be made in equal installments over the 6-year implementation period (10 years for developing countries).
- Countries shall bind (freeze) all tariffs at the end of the implementation period.
- If imports of products subject to tariffication were less than 3 percent of domestic consumption during 1986-88, countries shall provide market access opportunities of 3 percent of domestic consumption in 1995, rising to 5 percent of consumption by 2000.
- If imports of products subject to tariffication were greater than 5 percent of domestic consumption during 1986-88, countries shall provide market access opportunities at or above 1986-88 average annual import levels.
- Countries could delay tariffication for 6 years (10 years for developing countries) under certain conditions but would be required to provide higher minimum access opportunities.[10]
- Countries could invoke a special safeguard mechanism if imports of products subject to tariffication rise above a certain level or prices of such products fall below a certain level.

Export Subsidies

Significant achievements in the area of export subsidies would include commitments to reduce both budgetary expenditures on export subsidies

[10]Under this provision, Japan would delay tariffication of its rice import ban for at least 6 years and, in exchange, would provide minimum access of 4 percent of domestic rice consumption in 1995, growing to 8 percent by 2000. South Korea, which is treated as a developing country in GATT, could delay tariffication of its rice import ban for at least 10 years. In exchange, it would provide minimum access of 1 percent of domestic rice consumption in 1995, growing to 4 percent over 10 years; it also offered additional market access opportunities in other products. The Philippines and Israel would also delay tariffication on certain products.

and the quantity of subsidized exports. Because the amount of export subsidies paid in certain countries, notably the United States and those belonging to the EU, has increased since 1986, implementing the required reductions would have meant substantial decreases in export subsidies in the first year of implementation. In order to allow more gradual reductions in areas where export subsidies or the volume of subsidized exports have increased, countries could start making reductions from either the 1986-90 or 1991-92 average but still would be required to achieve the extent of reductions called for in the Final Act.

While the agreement would require the United States to cut its export subsidies by the same percentages as other developed countries, this option would allow the United States to subsidize the export of an additional 7.5 million metric tons of wheat and flour and 1.2 million metric tons of vegetable oil during the implementation period. Similarly, the EU could subsidize the export of an additional 8 million metric tons of grain.

The Final Act contains the following provisions on export subsidies:

- The agreement identifies all government policies that are considered export subsidies.
- All countries shall reduce budgetary expenditures on export subsidies by 36 percent (24 percent for developing countries) and the quantity of subsidized exports by 21 percent (14 percent for developing countries).
- Reductions would be measured from the average 1986-90 level and made in equal installments over the 6-year implementation period (10 years for developing countries). However, in cases where export subsidies have increased since the 1986-90 average, countries could initiate reductions from the 1991-92 average.
- Reductions would be made at the individual commodity level.
- Products not receiving export subsidies during 1986-90 could not receive them in the future.

Internal Support

The agreements reached on internal support would impose more modest disciplines than those reached on market access restrictions and export subsidies for several reasons. While reductions would be required in internal support, they would be made at an overall rather than individual commodity level, providing countries with tremendous flexibility in targeting areas for reduction. The United States would not be required to make any reductions in internal support because the provisions contained in the 1990 Farm Bill[11] are sufficient to comply with the agreement. Also,

[11]Food, Agriculture, Conservation, and Trade Act of 1990 (P.L. 101-624).

the agreement would exempt direct payments linked to production-limiting policies from reductions, thereby affording special treatment to major internal support programs in the EU and the United States.[12] Finally, the agreement would authorize the continued use of a wide variety of internal support policies that are not considered trade-distortive, including income support not linked to production, and support for research, marketing, disease control, and environmental programs.

The Final Act contains the following provisions on internal support:

- The agreement specifies what types of internal support shall be included in an aggregate measure of support.
- Countries shall reduce their aggregate measure of support by 20 percent (13 percent for developing countries).
- Reductions would be measured from the average 1986-88 level and made in equal installments over the 6-year implementation period (10 years for developing countries).
- Direct payments linked to production-limiting policies and policies that do not affect trade would be exempt from reductions. Certain policies included in the aggregate measure of support would be exempt from reductions for developing countries.
- Reductions would be made at an aggregate support level.
- Countries would receive credit for reductions in support made since 1986.
- A country's aggregate measure of support could not exceed the level achieved at the end of the implementation period.
- Domestic support measures that fully comply with the agreement would be exempt from certain GATT challenges from 1995 to 2003.

Sanitary and Phytosanitary Measures

In the area of sanitary and phytosanitary measures, the Final Act would allow countries to determine their own standards. However, to discourage their use as nontariff barriers, sanitary and phytosanitary measures would have to be scientifically based.

The Final Act provisions on sanitary and phytosanitary measures include the following elements:

[12]The EU and the United States make direct income payments to farmers, respectively called "compensatory payments" and "deficiency payments." In both cases, receipt of the payment is contingent upon farmers removing a certain percentage of their land from production.

- Countries could set their own standards governing food safety and animal and plant health, or they could use international standards.[13]
- Standards shall be derived from scientifically based assessments of risk.
- Standards that are stricter than international standards would have to be scientifically justified, if challenged.
- Importing countries shall accept exporting countries' standards that differ from their own if the standards provide the same level of protection.
- Countries shall make information about their standards available to interested parties and shall notify them of any changes that may affect trade.

Establishing a Committee on Agriculture

In addition to the four major areas of interest to the United States, the Agreement on Agriculture requires that a Committee on Agriculture be established as part of WTO. While operating procedures have yet to be drafted, the agreement assigns the committee numerous responsibilities. Among the most important, the committee is to review countries' progress in implementing their Uruguay Round commitments. To facilitate this process, countries are to provide the committee with information about (1) domestic measures taken as a result of the UR and (2) any new or modified domestic support measures deemed to be exempt from internal support reductions. The committee is to provide a forum for countries to discuss each others' implementation of their commitments. Countries are also to notify the committee before implementing any of the safeguard measures or export prohibitions allowed by the Agreement on Agriculture.

Potential Impact of the Agreement

Analyzing the impact of the Agreement on Agriculture is complex. While the agreement is generally expected to increase global agricultural trade, the extent to which individual countries and commodity sectors would benefit from the agreement varies. Anticipated benefits include increases in trade, income, and employment, and decreases in government expenditures. One of the most important gains would be the extent to which the agreement influences future government policies related to agricultural trade. For example, the nature and extent of market access restrictions will become more transparent and stable through tariffication of nontariff barriers. The agreement would also limit the extent to which governments could support agriculture in the future by capping and reducing the level of export subsidies and internal support, and binding all tariffs.

[13]Three international scientific organizations are recognized for their expertise in setting standards: the Codex Alimentarius Commission, the International Office of Epizootics, and the International Plant Protection Convention.

The depth of reform assented to in the Agreement on Agriculture is less significant than that initially sought by the United States. However, USTR and GATT officials stated that the agreement represents an important "first step" toward meaningful agricultural reform.

Among the various economic studies of the Uruguay Round, a 1992 OECD study analyzed the effect of partial liberalization—defined as a 30 percent reduction in agricultural and nonagricultural subsidies and market access restrictions—on global income and agricultural trade.[14] The authors believed that such a scenario closely approximated the anticipated results of the Uruguay Round. The benefits of partial liberalization were not expected to accrue evenly to developed and developing nations, agricultural exporters and importers, or agricultural commodity sectors. For example, the study estimated that partial liberalization would increase annual global income by $195 billion in the year 2002; developed nations' share of this gain would be $104 billion, while developing nations' share would be $91 billion. Liberalization would cause world prices for meats, coarse grains,[15] vegetable oils, sugar, and dairy products to increase, while world prices for wheat would remain stable and world prices for rice, coffee, and cocoa would drop. Higher world prices for some commodities would hurt countries that are net food importers—usually the poorest developing countries.

According to a GATT official, the most effective measures would be the disciplines on market access restrictions and export subsidies, rather than the more modest reductions in internal support. However, the full impact of these measures might not be seen immediately, as countries would have several years to adjust their policies. For example, exports should increase slightly over the short term as countries grant the required minimum market access opportunities, with long-term increases linked to the gradual cuts in tariffs. Increased world demand due to trade liberalization combined with decreases in subsidized exports should lead to higher prices. However, the flexibility that would allow more subsidized exports of certain commodities during the implementation period might delay anticipated price increases in those commodities.

The U.S. Department of Agriculture (USDA) estimated the economic benefits of the Uruguay Round for the U.S. agriculture sector in March 1994. Its analysis addressed the effect on exports, farm income, export-related employment, and government revenues and expenditures,

[14]Goldin and van der Mensbrugghe, Trade Liberalization: What's at Stake?

[15]Coarse grains include maize, rye, barley, oats, sorghum, millet, and other grains.

and projected potential impact in each area to the years 2000 and 2005. USDA provided a range of figures for potential impact in each area because it used two sets of assumptions about income growth.[16] The value of annual agricultural exports was expected to increase between $1.6 billion and $4.7 billion by the year 2000, and between $4.7 billion and $8.7 billion by the year 2005. Increased exports of grains, feeds, and animal products would account for most of these gains. Increased exports and higher world prices were expected to raise net farm income by $1.1 billion to $1.3 billion and create 41,000 to 112,000 export-related jobs by the year 2000. Finally, given that certain changes to U.S. farm programs would have to be implemented, USDA estimated that, by the year 2000, tariff revenues will decrease by $275 million and government expenditures for internal support and export subsidies will decrease by $0.7 billion to $1.3 billion.

Although USDA's study projected a positive effect for U.S. agriculture, the impact of the UR will vary by commodity sector. Because the agreement is designed to increase trade by lowering market access restrictions, export-oriented sectors would be likely to gain more than sectors traditionally protected from imports. USDA expects higher world income and reductions in other countries' tariffs and export subsidies will allow the United States to increase exports of coarse grains, cotton, dairy, meat, oilseeds and oilseed products, rice, specialty crops like fruits and nuts, and wheat. At the same time, U.S. export subsidies for dairy, coarse grains, meat, oilseed products, and wheat will be reduced.

A June 1994 ITC study[17] analyzing the impact of the Uruguay Round agreements on the U.S. economy and selected industries found that the net effect of the Final Act on U.S. agricultural sectors would be generally positive, increasing the overall level of trade and employment opportunities. ITC found that because the Final Act would increase both U.S. agricultural exports and the level of agricultural imports, the overall net effects would likely result in small to modest gains for U.S. agriculture sectors. According to the ITC study, there would likely be small increases—over 1 percent to 5 percent—in certain U.S. exports, including

[16]USDA used both optimistic and conservative growth estimates. Optimistic estimates were developed by USTR and the Council of Economic Advisers (CEA) which estimated that the Uruguay Round could increase global income by as much as 5 percent and U.S. income by as much as 4 percent over a 10-year period. Two-thirds of this growth was attributed to dynamic gains that would come from higher investment and technological innovation that would result from trade liberalization and income growth. Under this assumption, U.S. GDP would be 1.5 percent higher in the year 2000 and 4 percent higher in 2005 as a result of the Uruguay Round. USDA, in conjunction with USTR and CEA, also developed a less optimistic assumption whereby U.S. GDP would be 0.7 percent higher in the year 2000 and 1.8 percent higher in 2005 as a result of the Uruguay Round.

[17]Potential Impact on the U.S. Economy and Industries of the GATT Uruguay Round Agreements.

livestock and meat, poultry and eggs, and tropical and specialty products. The study projected modest gains—over 5 percent to 15 percent—in U.S. exports of fruits and vegetables, grains, and tobacco and tobacco products. Finally, ITC projected sizable increases—over 15 percent—in exports of dairy products and beverages. In addition, ITC projected that there would likely be small increases—5 percent or less—in agricultural employment.

The ITC study also projected that some U.S. agriculture sectors would experience small negative effects in production and employment, however, due to increased import competition as U.S. nontariff measures are liberalized. These sectors include wood products, peanut and vegetable oils, certain processed fruits and vegetables, and oilseeds.

To comply with the agreement, U.S. laws that authorize quotas to restrict imports, such as section 22 of the 1933 Agricultural Adjustment Act, as amended (7 U.S.C. 624),[18] and the 1979 Meat Import Law (P.L. 96-177), would have to be converted to tariff equivalents. Tariff equivalents would initially offer the same level of protection as quotas, although they would have to be reduced over the implementation period. For import-sensitive commodities, the United States offered the minimum 15-percent tariff reduction. Nonetheless, certain commodity sectors protected by section 22 will face additional imports as a result of commitments to provide minimum market access opportunities and subsequent tariff reductions.

Perhaps the most significant effect of the UR would be its impact on future government policies related to agricultural trade. According to a GATT official, among others, the Agreement on Agriculture would require several fundamental changes in government support and provide the basis from which future reforms could be made. First, tariffication of nontariff barriers would make the extent and cost of import restrictions more transparent to consumers and other countries. Achieving commitments to reduce such restrictions in the future should be easier. Second, the agreement would cap support and protection, whether offered through market access restrictions, export subsidies, or internal support, at base period levels and require subsequent reductions. The end of the implementation period would result in across-the-board bindings on all agricultural tariffs, an achievement that has not yet been reached for industrial goods. Third, the various disciplines should make agricultural trade more responsive to market forces. Finally, several countries, including those within the EU, undertook domestic agricultural reform as a

[18]Section 22 restricts imports of cotton, peanuts, and certain sugar and dairy products.

result of the Uruguay Round. U.S. officials said Common Agricultural Policy reform might never have been achieved without external pressure from the GATT negotiations.

Issues to Watch

Given that the Agreement on Agriculture is complex and would require countries to make many changes to their agricultural policies, several issues need to be monitored:

- Changes to U.S. agriculture policies. In order to comply with the agreement, the United States would be required to reduce export subsidies, convert import quotas and other restrictions to tariffs, and reduce all tariffs. These requirements have raised questions about the future structure of U.S. agriculture policies. For example, several U.S. commodity groups were interested in how export subsidy programs, like the Export Enhancement Program, among others, could still be used in ways that comply with the agreement. The impact of policy changes would also need to be monitored, for example, to ensure that changes in U.S. laws would be consistent with new U.S. obligations under the agreement related to the health and safety of animals and plants.
- Changes in other countries' policies. The Uruguay Round would require other countries to make a variety of changes and implement new policies. The extent to which countries meet their obligations, either by reducing support or opening their markets, would affect U.S. farmers. Therefore, other countries' implementation of the agreement would need to be monitored.
- Effectiveness of the Committee on Agriculture. The agreement would require a Committee on Agriculture to be established but does not specify the committee's structure, role, or responsibilities. The United States would like the committee to help monitor implementation, but some USDA officials said such a role is unlikely. Discussions about this issue, which would occur in the months preceding implementation of the agreement, as well as operation of the committee once established, would need to be monitored.
- Continuing the reform process. The agreement would require negotiations about further agricultural reform to begin again in the year 2000. Monitoring the effectiveness of the agreement's disciplines and their impact on U.S. agriculture during the first 5 years of the implementation period is necessary in order to know what issues should be raised in future discussions.

The Integration of Textiles and Apparel Into GATT

Background

Historically, the U.S. textile and apparel (clothing) industry has been particularly sensitive to trade liberalization agreements because of intense foreign competition due to low foreign production costs. Thus, while the U.S. economy as a whole might benefit from an agreement to liberalize trade, the textile and apparel industry could suffer significant job losses.

During the 1960s, the United States maintained import restraints on cotton under a long-term cotton agreement but became increasingly concerned about the sharp growth in imports of textiles and apparel of man-made fiber. To reduce the growth in imports and the effect on the domestic industry, Congress took steps, including passing several restrictive quota bills, to control the problem. Because these moves worried major supplier countries, the Nixon administration pledged to seek a solution to the problem. Specifically, the United States sought to negotiate a multilateral multi-fiber agreement. In December 1973, representatives of 50 nations met under the GATT's aegis to conclude negotiations on the Multi-Fiber Arrangement (MFA). MFA went into effect in January 1974 and is still in effect.

MFA provides a basis from which developed and developing countries may negotiate bilateral agreements or impose unilateral restraints on textile and apparel imports that disrupt domestic markets. The arrangement establishes standards for determining market disruption, minimum levels of import restraints, and annual growth rates for imports of specific products. In practice, these restraints have been used only by developed countries. MFA also established in Geneva a Textile Surveillance Body to supervise the arrangement and examine the justifications for actions taken by MFA members. The Textile Surveillance Body is also involved in settling cases involving textile disputes between MFA member countries.

While MFA has been negotiated within the framework of GATT and supervised by the GATT's Committee on Textiles, the arrangement is inconsistent with several GATT articles. MFA is an anomaly because it is essentially a sector-specific agreement that runs counter to GATT nondiscriminatory principles. Further, the last decade has seen the strengthening of MFA protectionist features. As a result, some of the

bilateral agreements associated with MFA have become more restrictive, with diminished annual import quota growth rates, more controlled product categories, and reduced flexibility.

The textile trade parameters[19] between many MFA members were established through the bilateral agreements. The United States has maintained at any given time approximately 30 to 40 bilateral restraint agreements that have controlled approximately two-thirds of U.S. textile and apparel imports. While these agreements restrict imports, they may also incorporate provisions allowing for trade growth, flexibility to adjust specific import limits, and consultations to resolve issues. In general, the bilateral agreements also set the quota "starting points" for GATT textile and clothing agreement negotiations.

The textile and apparel industry constitutes one of the largest manufacturing sectors in the United States. With 1.7 million workers in 1993, the industry accounted for nearly 9 percent of the manufacturing work force and was a large employer of women and minorities. However, industry employment declined 29 percent from 1973-1991, partly due to the increased share of imports in the domestic market, and partly due to productivity increases in U.S. textile and apparel production. Approximately 43 percent of the volume of apparel consumed in the United States is now of foreign origin, whereas only 10 percent of the volume of textiles consumed is of foreign origin. The U.S. textile and apparel industry shipped domestically and internationally $137 billion in products in 1993. However, only $10 billion of the $137 billion in U.S. products were exported while $40 billion were imported into the United States.

U.S. Negotiating Objectives

The overall U.S. negotiating objective for textiles and apparel was to formulate a process to eventually integrate the textile and apparel sector into GATT on the basis of strengthened GATT rules. The United States sought (1) gradual integration to allow time for industrial adjustment in the industry, (2) protection for the sector in the event of damaging surges during the transition period, and (3) greater openness of foreign markets

[19]The textile trade parameters established through U.S. bilateral agreements included specific restraints on one or more products. They may also have indicated the amount of trade growth allowed, the market access opportunities made available, and the "aggregate" ceilings set on total textile and apparel exports. In addition each agreement contains an equity clause assuring the bilateral partner that its exports will not be restrained to the benefit of imports from countries with which the United States does not have textile agreements.

to the textile and apparel trade in order to benefit U.S. producers and workers.

The United States, as well as many other developed countries, linked progress in the textile negotiating group to progress in several other UR groups. These developed countries said they could not give up the special protections of MFA unless the standard GATT rules and procedures gave reliable protection against unfair or disruptive trade practices. These protections included safeguards, antidumping and countervailing duties, intellectual property rights, and market access to several key competitors' markets. (These issues are discussed in chs. 4, 5, and 2, respectively.)

Results of the Uruguay Round

The Uruguay Round Agreement on Textiles and Clothing contains a schedule for a 10-year phase-out of MFA to be accomplished in three stages. After this period, textile and apparel trade would be fully integrated into GATT and its disciplines. The integration of MFA would be accomplished by (1) completely eliminating quotas on selected products in each of the three stages and (2) increasing quota growth rates on the remaining textile and apparel products in each of the three stages. At the end of 10 years, all bilateral quotas would be removed. Article 19 of the current GATT agreement, known as the safeguard clause (which allows GATT members to obtain emergency relief from import surges), would be available in case of serious injury to producers.

The 10-year phase-out would be divided into three stages of varying time periods: 3 years, 4 years, and then a final 3 years. Each stage would require a certain percentage of products to be integrated entirely into GATT. Quotas maintained under the UR agreement on these products would be fully eliminated. At the beginning of the first stage, 16 percent of all products would be stripped of quotas. At the second stage, an additional 17 percent of the original total would be phased out; and in the beginning of the final stage, 18 percent more would be phased out. As a result, 51 percent of the original total of all textile and apparel products would be integrated by the time the final stage of the phase-out was completed. Then, on the first day of the 11th year, the remaining 49 percent of these products would be fully integrated.

Each importing country could choose the products to be integrated at each stage of the 10-year phase-out. The least import-sensitive textile and apparel products would most likely be integrated first and the most import-sensitive products last. In general, according to USTR, the U.S.

products integrated into GATT during the first stage would probably be those already quota free, or product categories with low import-to-U.S.-production ratios, such as textured filament yarn. The products integrated in the last stage would most likely be some fabrics, such as poplin and broadcloth, and some apparel, like wool clothing items, that have a high import-to-U.S.-production ratio. Most apparel quotas are not anticipated to be integrated until the end of the phase-out.

While quotas on some products would be eliminated entirely in each stage, growth rates for other products remaining under quota would be increased over the phase-out period. Those quota growth rates, which would be in effect on "day 1" of the 3-year first stage, would increase by 16 percent. For example, the current MFA growth rate on most cotton and man-made fiber categories is 6 percent, and on "day 1" of the new agreement the growth rate would become 6.96 percent (a growth-rate increase of 16 percent). In the 4-year second stage, the growth rates on the quotas would increase 25 percent, with an additional 27 percent in the 3-year third stage. This "growth-on-growth" method would result in, for example, an original 6-percent growth rate increasing to an 11-percent growth rate for the third stage.

Only those countries that become members of WTO would be eligible to participate in the UR agreement's phase-out plan. In addition, the agreement states that all member countries would have to improve market access through measures such as tariff reductions and bindings, and by reducing or eliminating nontariff barriers. The United States has agreed to some modest cuts in textile and apparel tariffs. These tariff reductions are part of the market access agreement (see ch. 2).

During the phase-out, the textile agreement would provide a safeguard process different from the current MFA's selective safeguard process. The textile agreement's process would provide for the setting of quotas on uncontrolled trade and the protection of the market against damaging import surges. The safeguard process would permit an importing country to establish restraints against all countries that contribute to the cumulative damage to its domestic industry caused by imports. This process would differ from the current MFA process, under which restraints can only be applied to imports from a single country on the product that caused the market disruption. The textile agreement also contains stronger terms than MFA for dealing with quota circumvention, such as illegal transshipments through countries not subject to quotas. The products already under quota and those that have been integrated under

the phase-out plan would not be subject to this safeguard mechanism. After the phase-out, the standard safeguard mechanism of WTO would be available, whereby restraints would be imposed on an Most-Favored-Nation basis. Countries outside WTO, such as China, would most likely be subject to a selective safeguard mechanism.

The textile agreement would replace the MFA's Textile Surveillance Body with the Textile Monitoring Board, which would exist only during the phase-out period. The Textile Monitoring Board would supervise the implementation of the textile agreement, examine all measures taken under its provision, and hear disputes related to the agreement's implementation before formal invocation of the dispute settlement mechanism of WTO. After the phase-out period, textile and apparel disputes would be handled through the WTO's dispute settlement process.

Potential Impact of the Agreement

Estimates of the potential impact of the GATT's textile and clothing agreement vary. It is widely accepted that the U.S. textile and apparel industry would suffer losses in jobs and in domestic market share. It is also widely accepted that U.S. consumers would gain from this agreement due to lower prices and a greater selection of goods. Worker assistance programs may be used to address job losses in textiles and apparel; however, as we have reported in the past, there are shortcomings in the worker assistance programs including delays in providing the help and limitations in the services offered.[20]

Several economic impact studies commissioned by the textile industry indicated that significant job losses would likely occur in the United States. Because of these expected U.S. job losses, the unions representing textile and apparel workers are opposed to the agreement. A 1992 industry analysis by The WEFA Group[21] projected that the textile and apparel industry would lose 392,000 jobs during the 1993-2002 period due to increased productivity and the domestic industries' competitive disadvantages without the GATT agreement, a 23 percent decline in the textile and apparel workforce over the current level of employment. Moreover, the WEFA Group also projected that the industry would lose an additional 255,000 jobs directly and indirectly with the full phase-out of the

[20]See Multiple Employment Training Programs: Major Overhaul Is Needed (GAO/T-HEHS-94-109, Mar. 3, 1994), and Trade Adjustment Assistance Program Flawed (GAO/T-HRD-94-4, Oct. 19, 1993).

[21]The WEFA Group is a Bala Cynwyd, Pennsylvania-based economic research and forecasting team that employs 250 people worldwide.

MFA, resulting in an additional 15-percent decline in the textile and apparel workforce.

A November 1993 ITC study[22] projected that if all restrictions on textile and apparel trade were eliminated, 72,000 jobs would likely be lost in the textiles and apparel industry .

The Institute for International Economics estimated in a 1994 study[23] that 152,600 jobs would be lost in the apparel manufacturing sector and 16,200 jobs lost in textiles as a result of liberalizing MFA. The study also said, however, that consumers have paid a high price for protecting the textile and apparel industries. Each apparel job protected because of import restraints was estimated to cost consumers approximately $139,000 in higher apparel prices in 1990. If MFA is liberalized, the net gain to the country would be approximately $53,000 for each protected textile or apparel job that is lost.[24] According to the study, textiles and apparel accounted for 75 percent of the total costs of special protection of the 21 sectors examined, making textiles and apparel two of the most highly trade-protected industries in the United States.

The ISAC on Textiles and Apparel was dissatisfied with several key elements of the agreement. It believed quotas should have been phased out over a longer period. It further believed the quota growth rates would be too high. Finally, it believed that the quota phase-out should have been directly linked to effective market opening by all GATT participants. ISAC was also concerned about some broader elements of the overall UR agreement that would affect the textile and apparel industry. The transition period for phasing out export subsidies for most developing countries would allow these countries to subsidize exports for up to 8 years, possibly causing damage to the U.S. industry without the United States having any readily available countervailing duty remedy for that period (see ch. 4). In addition, ISAC was concerned that U.S. trade laws would be weakened because of new antidumping provisions (see ch. 4). ISAC also was concerned that WTO could potentially limit the U.S.' ability to act unilaterally regarding trade policy (see ch. 3).

[22]U.S. International Trade Commission, The Economic Effects of Significant U.S. Imports Restraints, (Washington, D.C.: Nov. 1993), Publication 2699.

[23]Gary Clyde Hufbauer and Kimberly Ann Elliot, Measuring the Costs of Protection in the United States, Institute for International Economics (Washington, D.C.: Jan. 1994).

[24]The net national welfare gain represents the gain to the consumer from trade liberalization, minus the losses incurred by the protected domestic producer due to lower prices and lost tariff revenue to the government.

The ISAC on Wholesaling and Retailing, however, strongly supported the textile and clothing agreement. It believed the agreement would have a positive effect upon the retailing and wholesaling sectors and would produce savings for U.S. consumers. Because wholesalers and retailers would have greater access to foreign products at lower costs, they believed they would be able to offer greater selection at lower prices to consumers. A representative of one large U.S. retailer said that MFA had created many problems for retailers because high tariffs forced prices up, and quotas often blocked delivery of needed merchandise.

The majority of organizations representing textile and apparel manufacturers opposed many elements of the agreement, particularly the MFA's phase-out plan. One apparel association representative said his segment of the industry was already being "killed by imports, and GATT will hurt it even more." He added, regarding the textile and clothing agreement, that his segment would not only like to be integrated into GATT last, but would like some government assistance, including funds for retraining apparel workers dislocated by the integration into GATT.

Issues to Watch

While the framework for change would be in place, many issues related to the MFA's phase-out within the textile and clothing agreement have yet to be resolved.

- The linkage between a country's market access reforms and that country's full participation in the MFA's phase-out has not been clarified. The agreement does not explicitly detail the criteria to be used to judge whether a country was complying with "market reforms" or whether an exporting country could be denied quota growth rates and product integration if it failed to meet its commitment to reform market access.
- Since worker retraining has been problematic in the past, careful consideration is needed on how textile and apparel workers dislocated by the integration into the GATT can be effectively retrained.

Government Procurement Code Provisions

Background

Governments are the largest single purchasers of goods and services in every major country, creating an annual world market potentially worth hundreds of billions of dollars. However, most of this vast market has traditionally been closed to foreign goods and suppliers due to formal and informal practices that discriminate in favor of domestic firms.

Government procurement is excluded from the GATT provisions for "national treatment." Therefore, those countries wanting to eliminate discriminatory practices in government procurement worked toward this goal in the separate Agreement, or code, on Government Procurement. The code was negotiated during the 1973-79 Tokyo Round of Multilateral Trade Negotiations. Code signatories were committed to not discriminate against other signatories' products in procurement by agencies, or "entities," explicitly named in the agreement. For example, the commitment to nondiscrimination obligates the United States to lift its Buy American price preferences when making purchasing decisions for U.S. entities covered by the code.[25]

The United States was disappointed with the code's coverage after the Tokyo Round, but hoped that future renegotiations provided for in the original 1979 agreement would both expand coverage and remedy an imbalance between U.S. and foreign procurement opportunities. We reported that the value of code coverage had not met expectations of generating over $20 billion in foreign sales opportunities and covering roughly 10 percent of each country's total procurement. Instead, in 1981 the United States had opened $18 billion in opportunities and gained access to $4 billion in foreign opportunities.[26] The original code generally

[25]In the United States, the original Buy American Act of 1933 (41 U.S.C. 10a, Mar. 3, 1933) required that, where applicable, only U.S.-origin articles, materials, or supplies be acquired for public use, unless such purchases were unreasonable in cost, inconsistent with the public interest, or met other conditions. This act did not contain a similar requirement for acquiring services. Executive orders and regulations implementing this law and establishing when the conditions are met created a price differential in favor of domestic products that is to be applied by government decisionmakers. Other restrictions, sometimes known as "little Buy American acts," can be found in appropriating or authorizing legislation.

[26]See The International Agreement on Government Procurement: An Assessment of Its Commercial Value and U.S. Government Implementation (GAO/NSIAD-84-117, July 16, 1984) and International Government Procurement Issues (GAO/T-NSIAD-89-50, Sept. 27, 1989).

did not cover those entities that purchased large amounts of telecommunications, heavy electrical, and transportation equipment.[27] Also, the code did not include the procurement of services, purchases costing less than a minimum "threshold" value, military weapons, and purchases made by state and local governments. Both the "excluded sectors" and services represented areas of great interest for U.S. suppliers.

A first phase of renegotiations was concluded in 1986, and it focused on amendments that improved code procedures. The amendments improved the detailed rules on the way contracts should be awarded by government entities; for example, the amendments strengthened the rules covering the qualification of suppliers and requirements for public notice. Generally, the code requires signatories to maintain open, transparent procedures and provide information to other signatories on their procurement process. The code only guarantees procurement opportunities rather than actual sales. The signatories meet regularly to review the operations of the agreement and to enforce signatories' obligations. The code's enforcement procedures include an independent dispute settlement process. However, the value of procurement covered under the code never lived up to its expectations, and the balance between U.S. and foreign opportunities remained quite skewed, with the United States accounting for roughly 80 percent of all procurement opportunities under the code.

Members of Congress, frustrated by continued foreign government discrimination against U.S. suppliers, enacted the Buy American Act of 1988, which was title VII of the Omnibus Trade and Competitiveness Act of 1988. This act requires annual investigations that specifically target discrimination by foreign governments in the procurement of U.S. products and services. The potential for imposing sanctions under the act creates a unilateral instrument for the President to compel other code signatories to expand their coverage and for nonsignatory countries to join the code.[28]

U.S. Negotiating Objectives

The second phase of renegotiations began in 1987 in conjunction with the Uruguay Round, and it focused on broadening the code to cover more of each signatory's procurement. The U.S.' goals were to achieve unfulfilled

[27]These entities, including government-owned utilities, were not covered at the time because the European Community (now the European Union) lacked jurisdiction over its member states' procurement in these "excluded sectors."

[28]See Combating Foreign Use of Discriminatory Government Procurement Practices (GAO/T-NSIAD-87-21, Mar. 25, 1987) and International Procurement: Problems Identifying Discrimination Against U.S. Companies (GAO/NSIAD-90-127, Apr. 5, 1990).

Tokyo Round expectations and to rectify the imbalance in procurement opportunities. To meet these goals, the United States had three specific objectives; the first was to broaden the code's coverage to the excluded sectors. Negotiators hoped to trade coverage of subcentral-level entities (e.g., state and local governments' procurement) for access to other signatories' public utilities, most notably telecommunications and heavy electrical equipment. The second objective was to broaden the code to include service and construction contracts. And the third objective was to strengthen the code by further improving the procedures it requires for the procurement it covers.

Results of the Uruguay Round

A new GATT agreement on government procurement was reached in Geneva on December 15, 1993. A supplementary U.S.-EU bilateral agreement was initialed in Morocco on April 15, 1994. These new agreements should, if approved, fulfill many of the objectives established in the early 1980s. While these procurement agreements may be a significant advance over the Tokyo Round, some areas would still not be covered.

Under the December agreement reached in Geneva, each code signatory offered to cover more central government procurement, subcentral government procurement, and procurement by other government-controlled entities, including utilities. However, under the new procurement agreement, signatories would extend code benefits to each other only on a reciprocal basis, not a most-favored-nation basis. This arrangement is a departure from how other GATT negotiations were conducted. Thus, coverage was negotiated bilaterally among all the parties.

Generally, entities were added to each signatory's lists of coverage, and thresholds were established for new areas of coverage.[29] A major accomplishment of this agreement was that for the first time services and construction would be covered under the code. This coverage could create significant additional foreign opportunities for U.S. suppliers. The United States would maintain some general exclusions from coverage, such as preference programs for small and minority businesses. It also excluded

[29]The code does not cover purchases costing less than a minimum "threshold" value of 130,000 Special Drawing Rights, which is an international reserve asset used as the IMF's official unit of account. Its value is based on a trade-weighted basket of major currencies and was equal to about $182,000 in 1992 for central government purchases of supplies and services. The threshold for state-level purchases would be about $500,000; for other government-controlled entities, such as the Tennessee Valley Authority, it would be about $560,000; and it would be about $7 million for construction contracts.

some sensitive service sectors from coverage under the agreement, such as transportation, research and development, and the federal research centers and laboratories.

Procedural improvements to the code were also agreed to in December 1993. The code would generally restrict "offsets."[30] Signatories would have to provide a bid challenge mechanism for appealing their government procurement decisions. This provision would create legal rights for foreign firms in each country under that country's national law.[31] Signatories would be required to notify others when they privatize government entities and remove them from code coverage; they may have to provide compensation if there were objections to this removal from coverage. The code's dispute settlement provisions would be brought into conformity with the new UR dispute settlement procedures, but with some modifications (e.g., shorter time frames for dispute resolution.)

Despite these accomplishments, U.S. negotiators were unable to reach agreement on opening up some important areas with EU, Japanese, and Canadian negotiators by the December 1993 deadline. However, last-minute negotiations between the EU and the United States were successfully concluded on April 15, 1994, that would enhance the December agreement. Further agreement was not reached with Japan and Canada.

The U.S.-EU bilateral agreement that was initialed in Morocco would extend code coverage beyond that agreed to in Geneva on December 1993. The April agreement would give the EU access to the procurement of goods, services, and construction by 37 U.S. states.[32] It also would give the United States access to the procurement of goods (only) by all EU levels of government through the code. The agreement would also add procurement by government-controlled entities. In this category, the EU would grant code coverage for the procurement of goods, services, and construction by utilities and ports in return for access to certain U.S. federal electric utilities (e.g., the Tennessee Valley Authority) and several

[30]"Offsets" are various concessions sometimes required by a purchaser. They include requiring bidders to provide (1) local content in the goods, (2) technology transfer to the purchaser, (3) some investment in the country, or (4) trade in other areas.

[31]A similar provision is part of NAFTA.

[32]The United States also agreed to open procurement by some other states and some cities to the EU outside of the code. Therefore, this procurement would not be subject to code procedures.

port authorities (including their airports).[33] The additional U.S. (subcentral) coverage extended to the EU under the April bilateral agreement is expected to be extended to many other signatories once they reach agreement.

Nevertheless, the United States would not gain access to some important foreign markets. The one major U.S. objective not achieved was coverage of EU government-controlled telecommunications. USTR estimates this market to be worth $15 billion annually. Also, the United States considered the Japanese and Canadian offers for additional coverage insufficient. Therefore, the United States would only extend them additional access at the central government level; USTR said it would withhold access to U.S. subcentral procurement until more Japanese construction services and Canadian provincial procurement, including hydroelectric Crown Corporations, are covered by the code.

While USTR's negotiating strategy has led to the potential expansion of each signatory's code coverage in the Uruguay Round and the U.S.-EU bilateral procurement agreements, only a few countries have joined the code as new signatories; only Israel, and Greece, Portugal, and Spain (as new members of the EU) have joined the code since the original Tokyo Round agreement.[34] Also, one new signatory, South Korea, will join the code when the new agreement goes into effect. Offsetting these additions, Singapore and Hong Kong, both original signatories to the code, did not join the new agreement.

Impact of the Agreement

Together, the December and April agreements would broaden code coverage significantly, primarily because of the inclusion of services and construction, subcentral-level procurement, and government-owned utilities. U.S. negotiators said they were confident the imbalance between U.S. and foreign procurement opportunities would end. The agreement would also add disciplines, or provisions, that were designed to improve enforcement of the code's procedures.

However, we cannot with any certainty calculate the total benefit of the new agreement for all signatories, nor can we say whether it would correct

[33]Procurement of goods and construction (not services) by electrical utilities had already been covered by an earlier, but temporary, bilateral memorandum of understanding between the United States and the EU.

[34]The original signatories to the code were the United States, Austria, Canada, Finland, Hong Kong, Japan, Norway, Singapore, Sweden, Switzerland, and, under the European Union, Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom.

the imbalance in code-covered opportunities between the United States and other signatories. Some estimates of new total code coverage have been given, but they vary in reliability. In December 1993, GATT estimated that the December agreement would broaden coverage tenfold annually, to $700 billion, but some negotiators said they did not consider this figure accurate.

USTR believes the most reliable figures available are based on an independent study of procurement data associated with the U.S.-EU bilateral negotiations. This study estimated that the United States would gain access to EU code-covered opportunities of $103 billion, and the United States would open up comparable opportunities to the EU.[35] Unfortunately, this study is limited to the United States and the EU. Estimates of potential U.S. access to opportunities in other countries, including Japan, Canada, and the Nordic countries, were educated guesses and were not based on analysis of historical procurement data.

The new agreement, if approved, would enter into force at the beginning of 1996. Even so, it could take many years for the changes to be implemented, new procurement opportunities to be created, and actual purchases of U.S. goods and services to be affected. Over time, the procedural improvements should help the code's enforcement and eliminate market barriers. For example, the creation of local bid challenge mechanisms would allow suppliers to take individual actions to enforce their rights directly in foreign countries. In addition, the restrictions on offsets would remove a burden placed on U.S. companies trying to enter foreign procurement markets.

Representatives of the private sector generally supported the new agreement. No ISAC opposed the December 15, 1993, agreement, though two reserved judgment pending further negotiations.[36] However, after the April bilateral agreement, an industry association representing U.S. telecommunications equipment manufacturers told us their members were very frustrated with the final outcome. They felt that 5 years of difficult negotiations had brought them no benefit.

Key issues between the U.S. and EU negotiators on telecommunications were unresolved. The United States insisted that government-owned

[35]See European Union—Government of the United States Study of Public Procurement Opportunities, Deloitt Touche Tohmatsu International (Houston, Texas: Mar. 22, 1994).

[36]ISAC 5 (Electronics and Instrumentation) and ISAC 7 (Ferrous Ores and Metals) reserved taking a position on the initial agreement.

European telephone companies be covered by the code. The EU wanted the United States to include the regional Bell operating companies; the United States refused because regional Bell operating companies are private companies, and their procurement decisions are commercially driven and thus outside of government control. Alternatively, the EU offered to cover telecommunications if federally mandated Buy American restrictions were eliminated for U.S. mass transit, airport, highway, and waste water projects. In the end, the two sides said they considered these areas too sensitive to be included.

As a result, the United States is continuing trade sanctions against the EU for discrimination in its $15-billion telecommunications procurement market. These sanctions were put in place in May 1993, after a title VII investigation in February 1992 found the EU utilities directive to be a discriminatory procurement policy.[37] In 1992, USTR reported that these sanctions restricted EU access to U.S. contracts worth $20 million. The EU responded by imposing sanctions against the United States worth $15 million.

Now that the Uruguay Round has ended and U.S.-EU bilateral agreements have been reached, the EU has been given access to billions of dollars in new U.S. procurement opportunities. Thus, despite using sanctions, U.S. negotiators have reduced leverage to compel the EU to open its government-controlled telecommunications market.[38]

USTR has stated that U.S.-EU negotiations on telecommunications will continue. Also, USTR hopes that future bilateral discussions with Japan and Canada may resolve differences over limits on covering construction procurement and provincial-level hydroelectric corporations, respectively. USTR said then, U.S. subcentral and government-owned utility procurement might be offered to these countries as well. While U.S. negotiators said they hope that future talks will address all of the mentioned omissions, they have no immediate plans to restart negotiations.

Issues to Watch

The effectiveness of the expanded government procurement code will, if approved, depend on how well it is implemented, both at home and abroad. We know from evaluating the implementation of the Tokyo Round

[37]USTR noted that Germany, Greece, Spain, and Portugal are not included in the sanctions because they "do not discriminate against the United States in this sector."

[38]See International Trade: Efforts to Open Foreign Procurement Markets (GAO/T-GGD-94-155, May 19, 1994).

procurement agreement that implementation was problematic, so similar problems might be expected if the code is broadened. These problems could arise as officials try to follow the code's detailed purchasing rules because the code is to be extended into new areas, namely services and construction, and would be applied by new levels of government. Furthermore, all areas and levels, including those already covered by the code would be subject to new provisions, such as local bid challenge mechanisms. U.S. and foreign government problems implementing the code would remain subject to compensatory action under the agreement's dispute settlement provisions.

There are also unanswered questions about the new agreement. For example, U.S. subcentral-level procurement was offered for code coverage only after 37 state governors responded to a request from USTR. The governors were asked to volunteer entities for code coverage. USTR took this voluntary approach to address a concern that the federal government might appear to be preempting states' control of this area. USTR officials told us that specific legislation is not needed to formalize the governors' volunteer commitments. While such federal legislation was considered to ensure consistency and stability in the states' commitments, there were concerns about how to craft such legislation and avoid the preemption issue. Instead, USTR officials told us that overall congressional approval of the GATT agreement would legally secure the state governments' procurement for code coverage. Nevertheless, a representative of the National Conference of State Legislatures expressed concern that the code might still preempt the states' ability to legislate in this area and that there could be court challenges to state laws that might conflict with the code.

Another issue would be whether actual foreign procurement opportunities for U.S. businesses would meet expectations for code coverage and whether these foreign opportunities would balance opportunities for foreign businesses in the United States under the new code. If deficiencies persist, there would be at least two methods to address problems and gain access to specific sectors or countries not covered by the new agreement. First, future negotiations can seek access to markets having good potential for U.S. suppliers. Second, discrimination in areas or countries not covered by the code are subject to action under U.S. trade laws, such as title VII of the Omnibus Trade and Competitiveness Act of 1988.

If the agreement is approved by Congress, the next challenges for the administration would be implementing, enforcing, and further broadening the agreement. Some of the potential issues include:

- how best to facilitate domestic implementation of the code by covered federal and state governments, and government-controlled entities for the procurement of goods, services, and construction to ensure that the United States is fulfilling its code obligations;
- how adequate is U.S. monitoring of foreign signatories' implementation of the code to ensure that U.S. goods and services receive fair treatment; then, if access to foreign markets is denied or discrimination takes place, what actions the U.S. government should consider taking to remove these barriers and ensure that U.S. rights under the code are enforced;
- what new initiatives are needed to achieve unfulfilled objectives, such as gaining access to EU telecommunications, Japanese construction, and Canadian hydroelectric procurement markets; and
- when, and with whom to initiate talks with nonsignatory countries on joining the code and opening their procurement markets to U.S. goods and services.

Trade and the Environment

Although not originally identified as a separate subject for negotiation, the relationship between trade and the environment has emerged as an important issue during the Uruguay Round. One of the GATT's primary objectives is to expand worldwide trade by further opening markets to foreign competition. Some environmental policy groups, on the other hand, want to ensure that the economic benefits of increased international trade do not lead to increased environmental degradation. Although environmental concerns were not specifically mentioned in the Punta del Este declaration, the United States pressed to put issues involving trade and the environment on the agenda for the Uruguay Round. For instance, the United States sought to ensure that GATT provisions would not potentially limit sovereign nations' ability to pass strong environmental laws, and to clarify when GATT provisions allow countries to impose trade restrictions to achieve environmental objectives. The United States also wanted to establish a dispute settlement mechanism for environmental concerns and to create a standing committee on trade and the environment within WTO. The Final Act would achieve some objectives, while others remain under consideration.

Background

The relationship and potential conflict between the goal of liberalizing international trade and concerns about protecting the environment have received increasing attention in the last several years. The combination of the expansion of international trade and the proliferation of national environmental laws and international environmental agreements has

meant that policies surrounding trade and the environment are no longer mutually exclusive.

For instance, negotiators strive to frame international environmental agreements, which may restrict the import and export of certain products deemed harmful to the environment, in a manner that does not violate international trade laws. Trade negotiators also try to acknowledge environmental concerns by framing international trade agreements so that they do not undermine environmental protection. At the national level, some countries want to preserve their ability to implement stringent environmental laws without being accused of erecting trade barriers. Furthermore, countries endeavor to determine when they can legitimately apply trade measures in order to strengthen environmental practices beyond their borders.

This trade-off between preserving the environment and achieving free and open trade has become a part of recent multinational trade negotiations. NAFTA has been widely recognized as a landmark accord for handling environmental issues in a trade agreement, as environmental concerns were dealt with both within the agreement and in side agreements crucial to NAFTA's passage into U.S. law.[39]

GATT has covered environmental issues throughout its history, through working groups, in codes drafted during the Tokyo Round, and in provisions of the Uruguay Round agreement signed in Marrakesh on April 15, 1994. In addition, article XX, "General Exceptions" to GATT, one of the original provisions of GATT when it came into force on January 1, 1948, has been invoked in cases affecting trade and the environment.[40] The major provisions dealing directly or indirectly with environmental concerns in the Uruguay Round agreement include those contained in the Agreement on Technical Barriers to Trade, the Agreement on Sanitary and Phytosanitary Measures, the Preamble to the Agreement Establishing the World Trade Organization, the Understanding on Rules and Procedures Governing the Settlement of Disputes, aspects of the Agreement on Subsidies and Countervailing Measures, and sections of both the Agreement on Trade-Related Aspects of Intellectual Property Rights and the General Agreement on Trade in Services. The Decision on Trade and

[39]For a complete overview of NAFTA, see North American Free Trade Agreement: Assessment of Major Issues (GAO/GGD-93-137A&B, Sept. 9, 1993).

[40]Article XX was not altered in the Uruguay Round, but has been cited in current GATT dispute settlement cases, including one to be discussed in this section of the report.

Environment calling for the creation of a workplan to deal with unresolved environment and trade issues was formally adopted on April 15, 1994.

GATT Working Groups Have Studied Trade/Environment Issues Since 1989

In 1971, GATT parties realized that environmental policies and practices varied among countries and that trade disputes could arise out of these differences. They also wished to anticipate possible reports arising out of the U.N. Conference on the Human Environment, to be held in Stockholm in 1972.[41] In response, the GATT parties established a Group on Environmental Measures and International Trade. However, the group did not meet during the next 20 years. It convened in 1991, as in 1972, in part to deal with issues arising out of a U.N. conference, namely the United Nations Conference on Environment and Development (UNCED).[42] Later in 1991, it adopted an agenda to concentrate on several issues, including the trade provisions in existing international environmental agreements, the transparency of national environmental regulations that are likely to affect or limit trade, and the potential trade effects of packaging and labelling requirements that aim to protect the environment.

In July 1993, GATT contracting parties decided to expand the scope of the Group on Environmental Measures and International Trade's work to conduct a follow-up of matters raised in Agenda 21 of UNCED. The group met several times to discuss the UNCED follow-up, but agreed to postpone intensive work on the issue until the Uruguay Round was completed in April 1994. The GATT Committee on Trade and Environment, (described at the end of this section), will now be reviewing Agenda 21.[43]

According to the GATT Secretariat, Agenda 21 calls for, among other things, the international economy to provide "a supportive international climate for achieving environment and development goals by promoting sustainable development through trade liberalization and making trade and environment mutually supportive." Agenda 21 also calls for the development of principles to govern when trade measures should be applied to enforce environmental policies.

[41]The U.N. Conference on the Human Environment, held in Stockholm in early June 1972, was the first global conference on the environment. One hundred and fourteen governments sent delegations to Stockholm. The conference produced a Declaration on Human Environment, an Action Plan for the Human Environment, and a Resolution on Institutional and Financial Arrangements.

[42]UNCED was established by U.N. General Assembly Resolution 44/228, adopted in December 1989. Dubbed the "Earth Summit," UNCED was timed to occur on the 20th anniversary of the 1972 Stockholm Conference on the Human Environment. The resolution took up a wide range of issues concerned with environment and sustainable development in Rio De Janeiro, Brazil, in June 1992. UNCED created a new U.N. body: the Sustainable Development Commission.

[43]Agenda 21 is an 800-page document setting out the objectives and activities on 40 subject areas; and the non-legally binding statement of forest principles.

In July 1989, GATT established the Working Group on Export of Domestically Prohibited Goods and Other Hazardous Substances. GATT ministers sought to bring under control the export of products prohibited from being sold in the domestic markets of the exporting countries because the products are harmful to human, animal, or plant life, or health or the environment.

Article XX Has Been Cited in Environment-Related Matters

Since the formation of GATT in 1947, article XX, "General Exceptions" to GATT obligations has been referred to in cases involving environmental issues, although the article does not specifically mention the environment. Article XX lists certain public policy measures that may be imposed notwithstanding other GATT articles, provided those measures are not "applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade." Two sections could be used to justify exceptions to GATT to protect the environment. Article XX (b) exempts from GATT rules those measures "necessary to protect human, animal or plant life or health"; while article XX (g) exempts measures "relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption."

Although article XX did not change in the Uruguay Round, GATT signatories are calling for clarification of its provisions. Dispute settlement cases under GATT, in which countries have defended trade measures, or sanctions, they imposed on environmental grounds, have involved interpretations of the provisions of article XX.

For example, recent consideration, under GATT, of complaints against the United States may have significant implications for similar future conflicts. Pursuant to provisions of the Marine Mammal Protection Act of 1972, P.L. 92-522, as amended, (16 U.S.C. 1361), the United States banned tuna imports from Mexico because Mexico exceeded U.S. standards for dolphin mortality. In February 1991, Mexico requested a GATT ruling against the United States for actions contrary to GATT rules. In August 1991, a GATT dispute panel concluded that GATT prohibits its members from imposing import restrictions based on jurisdictional concerns, or from taking action to dictate how other nations produce their export goods. The GATT report is only a recommendation from the dispute settlement panel to the full GATT council, which must act if the recommendation is to go into effect. To

date, Mexico has indicated that it will postpone seeking a final GATT ruling on its complaint.

In June 1992, the EU requested the GATT contracting parties to establish a panel to examine under article XXIII:2, (DS29/2), restrictions maintained by the United States on the importation of certain tuna products. In July, 1992, the Kingdom of the Netherlands, on behalf of the Netherlands Antilles, requested to be joined, as co-complainant, in the panel to be established pursuant to the EU request. The panel submitted its report to the parties in the dispute on May 20, 1994.[44]

Environental groups have expressed concern that such GATT panel interpretations could limit a country's ability to influence environmental quality beyond its borders and thus undermine U.S. laws aimed at protecting the global environment. On the other hand, the U.S. action to ban tuna imports is seen by some countries as a unilateral attempt to impose U.S. environmental values on other nations.

U.S. Negotiating Objectives

Under the Uruguay Round of GATT, environmental protection was not originally identified as a U.S. negotiating objective in the Omnibus Trade and Competitiveness Act of 1988, which spelled out U.S. goals. However, Congress stated in a provision of the High Seas Driftnet Fisheries Enforcement Act,[45] enacted in the 102nd Congress, that the President, in trade negotiations, should seek to, inter alia, "1) address environmental issues related to the negotiations; 2) modify articles of the General Agreement on Tariffs and Trade...to take into consideration the national environmental laws of the GATT contracting parties and international environmental treaties; 3) secure a working party on trade and the environment within GATT as soon as possible; 4) take an active role in developing trade policies that make GATT more responsive to national and international environmental concerns; 5) include Federal agencies with environmental expertise during the negotiations to determine the impact of the proposed trade agreements on national environmental law; and

[44]The panel concluded "that the United States import prohibitions on tuna and tuna products under Section 101 (a)(2) and Section 305 (a)(1) and (2) of the Marine Mammal Protection Act (the "primary nation embargo") and under Section 101 (a)(2)(C) of the Marine Mammal Protection Act (the "intermediary nation embargo") did not meet the requirements of the Note ad (sic) Article III, were contrary to Article XI:1, and were not covered by the exceptions in Article XX (b), (g) or (d) of the General Agreement." The panel recommended "that the CONTRACTING PARTIES request the United States to bring the above measures into conformity with its obligations under the General Agreement."

[45]Public Law 102-582, Nov. 2, 1992, sec. 203.

6) periodically consult with interested parties concerning the progress of the negotiations."

The UR agreement contains a number of provisions that specifically address environmental concerns and the related issues of health and safety. The United States sought to ensure that the language in those provisions struck a balance between international trade rules and adequate protection of the environment. The United States also wanted to increase public disclosure and participation of environmental interests in the dispute settlement mechanism and strongly supported the formation of a permanent committee on trade and the environment in WTO.

Results of the Uruguay Round

Technical Barriers to Trade

The perceived vagueness of the health and safety exception in article XX and the general need for oversight of technical regulations and standards led GATT parties during the Tokyo Round to establish the GATT Agreement on Technical Barriers to Trade. The Agreement on Technical Barriers to Trade obligates GATT signatories to ensure that technical regulations and standards, including packaging, labelling, and marking requirements and methods of ensuring conformity with technical regulations and standards, are not adopted or applied so as to have the effect of creating unnecessary obstacles to trade. The UR agreement emphasizes this point by stating further that "technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective...." The agreement defines legitimate objectives as "inter alia, national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment."

The United States sought to clarify the "shall not be more trade-restrictive than necessary" requirement. Environmental groups were concerned that the requirement could prompt more challenges to countries' environmental rulings. Conversely, business interests had the opposite fear that the vagueness of the language may result in fewer challenges to what they might view as trade-restrictive practices.

The United States was successful in negotiating the removal of a footnote to the Agreement on Technical Barriers to Trade calling for a "proportionality test" to help determine whether a standard was legitimate.

Potentially, with this footnote, a GATT panel could have ruled against a standard not because it was trade restrictive, but because its economic impact might be disproportionate to the standard's purpose.

Sanitary and Phytosanitary Measures

The UR Agreement on Sanitary and Phytosanitary Measures is a new provision that would treat separately multilaterally recognized rules and disciplines for the development and application of such measures, including measures taken to protect human, animal, or plant life or health in the areas of food safety and agriculture. The Agreement on Sanitary and Phytosanitary Measures recognizes and acknowledges the right of each government to establish domestic food and safety laws and would allow those laws to be at a higher level than international standards, as long as there is scientific justification for the standard and that a risk assessment has been carried out.

Two provisions in Agreement on Sanitary and Phytosanitary Measures would potentially affect trade and the environment. As in the Agreement on Technical Barriers to Trade, the Agreement on Sanitary and Phytosanitary Measures contains the proviso that "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...protection,..." In another provision, the Agreement on Sanitary and Phytosanitary Measures would require that members accept the sanitary and 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."

A principal negotiating objective of the United States was the elimination of unjustified sanitary and phytosanitary restrictions on agricultural trade, without impairing the right of the United States or other states to establish and apply appropriate measures to protect public health and control plant and animal pests and diseases. As in the Agreement on Technical Barriers to Trade, the United States pressed for clarification of the language "not more trade restrictive...."

In addition, U.S. environmental groups believed that the importing country should have the primary right to determine whether the exporting

country's "equivalent" standard is adequate. The Agreement on Sanitary and Phytosanitary Measures would leave it up to the exporting country to objectively demonstrate to the importing country authorities that this standard adequately exists. However, the United States did successfully negotiate the insertion of a footnote to the Agreement on Sanitary and Phytosanitary Measures. The footnote would require a country challenging a sanitary or phytosanitary measure as being overly restrictive to trade to show that another measure that would achieve the same level of protection is "reasonably available" and would be "significantly less restrictive to trade."

Dispute Settlement

Negotiators in the UR realized that trade disputes involving environmental protection could not be resolved through trade policy alone. The debate centered on whether additional special procedures were needed in the dispute settlement mechanism to resolve trade and environmental issues and the extent to which there should be public participation and openness in the dispute settlement process. One concern was that specialized scientific information might be needed to assess the legitimacy of claims that trade restrictions were necessary to protect environmental objectives, such as in the tuna/dolphin case cited earlier.

The United States pushed for GATT dispute panels being required to hear such expert opinions regardless of whether the panel asked for them. The UR agreement would not require this, but would allow GATT members to periodically suggest names of government and nongovernment individuals to be added to a list[46] maintained by the Secretariat, subject to the approval of the Dispute Settlement Body. The United States also pressed for allowing nongovernmental organizations to provide information to GATT dispute panels and for the public to have access to all dispute settlement submissions. Neither of these specific objectives was achieved, but the dispute settlement process was opened up in other ways. The UR agreement would not specify "environmental experts," but would allow for the possibility of environmental experts to serve as members of dispute resolution panels. In addition, parties to a dispute would be required, upon request of a member, to prepare nonconfidential summaries of their written submissions to a panel. These submissions could then be made available to the public by request of another GATT member. (See ch. 3 for a full discussion of dispute settlement).

[46]The list shall include "the roster of non-government panelists that was established by the GATT CONTRACTING PARTIES on 30 November 1984 (BISD 31S/9), and other rosters and indicative lists established under any of the covered agreements..."

Other GATT Measures Affecting the Environment

Other parts of the UR agreement that make reference to or affect environmental policy include article 8.2 of the Agreement on Subsidies and Countervailing Measures, the Preamble of the Agreement Establishing WTO, and article 27 of the Agreement on Trade-Related Aspects of Intellectual Property Rights. In article 14 of the General Agreement on Trade in Services, reference is made to protecting human, animal, and plant life.

A subsidy to industries to promote adaptation of existing facilities to new environmental requirements would, under limited and specified circumstances, be "nonactionable," that is, the subsidy could not be challenged under WTO rules. (See ch. 4 for a full discussion of the subsidies agreement). The Preamble to the Agreement Establishing WTO recognizes, among other things, the objective of seeking to protect and preserve the environment.

According the GATT Secretariat, the main issue under the provisions on intellectual property of relevance to the discussion on trade and the environment relates to whether patents should be granted for inventions of plant and animal varieties and for the biological processes for the production of plants and animals. Another issue is whether plant varieties should be protected under patents or some other system. Article 27 of the Agreement on Trade-Related Aspects of Intellectual Property Rights states: "Members may exclude from patentability inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect ordre public or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment...." (See ch. 5 for a full discussion of intellectual property.) Finally, article 14 of the General Agreement on Trade in Services states that "nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures...necessary to protect human, animal or plant life or health;" (see ch. 5 for a further discussion of GATS).

Issues to Watch

Committee on Trade and Environment Created Within WTO

During the latter part of the UR negotiations, the United States and the EU pushed for the creation of a permanent committee on trade and environment in WTO. The Preamble to Establishment of WTO sets out as one of its goals allowing for the "optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to

protect and preserve the environment and enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,..." The United States and nongovernment organizations representing environmental interests believed a permanent committee to be crucial to having WTO seriously carry out this mandate. Views were mixed among negotiators, however, on the need for such a standing committee. Developing countries originally did not support the notion, due to a concern that the committee might promote excessive environmental protection that would unduly restrict their economic growth.

On April 15, 1994, GATT ministers directed WTO to establish a Committee on Trade and Environment. The formation of the committee would represent a major breakthrough for the environmental community both symbolically and practically. It would demonstrate GATT ministers' commitment to considering the interrelationship between international trade and environmental policy in WTO deliberations on trade matters.

How the committee would operate, and the nature of the issues on its agenda would need to be watched as it carries out its responsibilities for resolving important and challenging policy questions. The Decision on Trade and Environment calls for the committee to "with the aim of making international trade and environmental policies mutually supportive," address several issues. Some of the issues the decision lists include: "the relationship between the provisions of the multilateral trading system and trade measures for environmental purposes, including those pursuant to multilateral environmental agreements;...the relationship between the dispute settlement mechanism in the multilateral trading system and those found in multilateral environmental agreements...." According to a GATT Secretariat official, the committee is to determine how WTO should respond to environmental treaties and make appropriate recommendations on whether modifications of the provisions of the multilateral trading system are required, compatible with open, equitable, and nondiscriminatory international trade. The official stated that the committee will forward its recommendations to the ministers at their first biennial meeting, expected to take place in 1996.

Areas Linked to the Uruguay Round

During the Uruguay Round, two sector-specific negotiations, one on steel and another on civil aircraft, began parallel to but outside of the GATT process. The negotiations, to reach a multilateral steel agreement (MSA) and a new agreement on trade in civil aircraft, included issues that were also being discussed in the broad GATT negotiations, such as dispute settlement and subsidies and countervailing duty provisions. Both of these negotiations were linked to the UR because of the overlap of issues and political considerations in trying to reach agreement in these contentious areas. Despite this linkage, the parties failed to reach a sector-specific agreement in either area. Although both areas will be affected by the results of the UR, the sector-specific talks are expected to continue.

Multilateral Steel Agreement

Background

In the early 1980s, the U.S. steel industry began to suffer from declining profitability, production, and employment. For several decades, the dependence of the U.S. economy on steel mill products had steadily decreased, and competition from foreign producers increased.[1] The causes of the industry's competitive problems were both internal and external. Internal causes included, among others, (1) slow productivity growth brought on, in part, by lagging implementation of new technologies and little effort at research and development; (2) disproportionally high U.S. labor costs; (3) high air pollution abatement costs; and (4) deterioration of the U.S. advantage in raw material costs. External causes included (1) global overcapacity, (2) foreign subsidies to competitors, and (3) falling international shipping costs that made exporting to the United States easier. As foreign governments had sought to help their own troubled steel industries, in part through greater exports and subsidization, import competition in the U.S. market increased.

In 1992, U.S. steel-producing companies employed about 176,000 people and produced about 93 million net tons of steel, as compared to 243,000 people and 85 million tons of production in 1983.

The severe economic recession in the early 1980s resulted in major losses for the steel industry. As recovery began, the substantial rise in the value

[1]Large, integrated steel producers also faced competition in certain products from domestic minimills. Minimills are small, nonintegrated steel plants, meaning they rely on scrap steel as a raw material and do not convert iron ore into steel.

of the dollar put U.S. producers at a competitive disadvantage, causing a surge of steel imports. After conducting an investigation under section 201 of the Trade Act of 1974, as amended, ITC concluded in 1984 that the U.S. steel industry was being harmed by imports and recommended a 5-year program of quotas and tariffs.[2] Emphasizing his desire to avoid protectionism, the President rejected the ITC's recommendations and set forth his own program. In 1984, USTR began implementing this program by negotiating new voluntary restraint agreements on exports of steel to the United States. The program made VRA protection contingent upon the industry's taking certain steps to modernize and restructure. Also, unfair foreign trade cases were withdrawn by U.S. producers in accordance with these agreements.[3]

In 1989, the President's Steel Trade Liberalization Program extended the VRAs for another 2-1/2 years to permit the negotiation of an international consensus to eliminate trade-distorting practices and to provide more time for the industry to adjust and modernize. USTR was directed by the President to negotiate an international consensus, consistent with U.S. objectives in the Uruguay Round, to provide effective disciplines over government aid and intervention in the steel sector and to lower barriers to global trade in steel. The United States and the major steel-producing countries started negotiating a MSA outside of the GATT talks.[4]

The VRA program expired in 1992 without an agreement, but the parties made efforts to continue these industry-specific talks. Overall, steel imports accounted for about 18 percent of the domestic market that year, down from about 24 percent in 1986. In June 1992, under U.S. trade laws, the industry filed over 80 petitions for protection from dumped and subsidized imports of many steel products from a number of countries. Some of these cases have been decided, with mixed results for the U.S. industry, but many are still in litigation before the U.S. Court of International Trade.

[2]Government efforts to protect the U.S. steel industry from harmful import competition and from unfair trade practices have a long history. Tariffs on steel products existed before the 1960s. Import quotas were first negotiated bilaterally in 1968 and were used for much of the following 25 years. Antidumping and countervailing duties to protect injured U.S. industries from unfair trade practices were applied in the late 1970s and early 1980s.

[3]See International Trade: The Health of the U.S. Steel Industry (GAO/NSIAD-89-193, July 12, 1989), and International Trade: Administration of Short Supply in Steel Import Restraint Agreements (GAO/NSIAD-89-166, June 5, 1989).

[4]Over 30 countries participated in the multilateral steel negotiations, including the EU, Japan, South Korea, Brazil, Turkey, and the Nordic countries.

The MSA negotiations were formally linked to the Uruguay Round at the Tokyo Summit in July 1993. The parties set a coinciding deadline (December 1993) and made any "zero-for-zero" Uruguay Round tariff reductions on steel products conditional upon successful negotiation of a MSA. Similarly, some parties stated that successful completion of the Uruguay Round was conditional on achieving an MSA that settled U.S. trade law actions against them.

U.S. Negotiating Objectives for an MSA

The original 1989 U.S. objectives for the MSA negotiations established by the President's Steel Trade Liberalization Program were to (1) achieve strong disciplines over trade-distorting government subsidies, (2) lower tariff and nontariff trade barriers so as to ensure market access, and (3) create enforcement measures to deal with violations of the consensus obligations.

Results of the MSA Negotiations

The December 1993 deadline passed with no MSA, and these talks were delinked from the Uruguay Round. The world steel producers could not overcome the impasse that has existed since March 1992. For example, while the U.S. position was to accept no forms of subsidization, other countries wanted some subsidies "green-lighted." While other negotiating parties, including the EU, wanted to constrain the use of dumping and countervailing duty actions against them, the United States sought to preserve the right to use these laws in certain circumstances. Also, there was disagreement over whether to allow waivers to or exemptions from any discipline on subsidies.

USTR told us that the parties began follow-on talks in April 1994; the parties asserted that they want to continue the MSA negotiations because, while the UR should help the steel industry, not all the issues particular to the steel sector were addressed in the new agreement.

Impact of the Uruguay Round Agreement on Future MSA Negotiations

The agreements reached within the UR would affect the steel industry and trade in steel products. Thus, the environment of future MSA negotiations may be different than in the past if the Uruguay Round changes take effect. It is uncertain whether these changes would create incentives for a future MSA or reduce the urgency for future action.

Some of the MSA negotiating objectives may be partially achieved if the UR agreement is approved. For example, the UR agreement would add

disciplines to subsidies and countervailing measures, and thus could eliminate some subsidies going to foreign steel producers. Also, UR tariff reductions would include steel products, despite the fact that the conditions established by the negotiating parties at the Tokyo summit were not met with a MSA.

The United States met its overall UR market access commitments by including steel products. According to the Department of Commerce, the total elimination of tariffs for steel and certain other sectors would collectively be a huge gain because U.S. tariffs tended to be much lower than foreign tariffs. Thus, U.S. officials believe that overall they would gain more access than they would give up in protection. However, the specific impact of eliminating steel tariffs on the steel industry could be different. Moreover, the impact could be different for various segments of the industry. "Zero-for-zero" steel tariffs could both increase import competition from foreign steel in the U.S. market and increase the competitiveness of U.S. steel exports in foreign markets.[5] Also, U.S. steel producers could indirectly benefit from their domestic customers getting reduced tariffs in other sectors for their exported products made of U.S. steel.

The U.S. steel industry has had mixed reaction to the UR agreement. Antidumping, subsidies and countervailing measures, and dispute settlement were all areas of concern to the U.S. steel industry in the UR negotiations. ISAC 7, representing ferrous ores and metals, reserved its support for the Uruguay Round's final agreement until implementing legislation answers their continued concerns about whether U.S. trade laws would be weakened. While most domestic producers accepted the tariff reductions as part of the overall UR agreement, some domestic producers voiced opposition because the loss of tariffs would remove protection for certain steel products against imports without the corresponding disciplines on trade-distorting government actions being negotiated under the MSA. Furthermore, if the agreement is approved, the negotiating leverage these tariffs provided to achieve other objectives will not be a factor in future MSA talks. Additionally, the industry is still concerned about the future use of permitted subsidies by foreign governments.

Issues to Watch

U.S. negotiators believed they achieved substantial progress in the MSA talks. USTR told us that the MSA was envisioned as going further than the UR

[5]In 1992, the United States imported 17 million tons of steel and exported 4 million tons of steel.

on many issues. USTR also said that none of the undecided MSA issues would be settled by the new UR agreement. Nevertheless, all the issues still under negotiation may evolve as the UR agreement affects world steel production and trade. The negotiating parties still disagree over whether to prohibit all subsidies for steel, specifically those allowable under the new UR subsidy provisions, and over limiting U.S. trade actions against subsidies not covered by the UR agreement. Also, they disagree over whether to allow temporary waivers from MSA disciplines. Other provisions to prevent anticompetitive trade practices (by private companies) and to achieve effective MSA dispute settlement remain under negotiation.

Civil Aircraft

Background

Government support for the aircraft industry was not initially a major issue under consideration in the Uruguay Round.[6] However, the July 1992 Agreement Concerning the Application of the GATT Agreement on Trade in Civil Aircraft (hereafter, bilateral aircraft agreement) between the United States and the EU, which placed some constraints on government support for large civil aircraft (LCA) manufacturers,[7] had called for the two parties to "multilateralize" the agreement at the earliest possible date. That is, the United States and the EU were to propose that disciplines along the lines of those contained in the bilateral agreement be incorporated into the 1979 GATT Agreement on Trade in Civil Aircraft (hereafter, 1979 GATT aircraft agreement). The EU was interested in reaching a revised multilateral aircraft agreement in conjunction with the scheduled completion of the Uruguay Round. Efforts to reach a new multilateral aircraft agreement by December 15 proved futile, and so it was agreed to continue negotiations with the goal of reaching agreement by the end of 1994. Nonetheless, GATT members did agree to the Agreement on Subsidies and Countervailing Measures that would have implications for the entire aircraft industry.

The LCA industry is dominated by two U.S. companies (Boeing and McDonnell Douglas) and the Airbus consortium of four European companies (Aérospatiale of France, Deutsche Aerospace of Germany, British Aerospace of the United Kingdom, and Construcciones Aeronáuticas S.A. of Spain), which was established in 1970.

[6]A forthcoming GAO report will discuss the U.S./EU bilateral aircraft agreement as well as efforts to multilateralize it.

[7]Large civil aircraft is defined as aircraft for 100 or more passengers, or its equivalent cargo configuration.

Despite the existence of the 1979 GATT aircraft agreement which covered virtually all civil aircraft products, trade tensions between the United States and the EU continued during the 1980s and early 1990s. The United States alleged that the Airbus consortium members had received billions of dollars in government support since it was established in 1970. For its part, the EU argued that the U.S. LCA industry had benefited from billions of dollars in indirect support (through military and aerospace research, development, and procurement) since the mid-1970s. On several occasions, the United States threatened to take trade action against the use of subsidies by European governments to support Airbus member companies.

In an effort to put greater disciplines on direct and indirect government support for the research, development, and production of LCA, the United States and the EU entered into a bilateral agreement on July 17, 1992. The bilateral agreement called for (1) a prohibition on any future production support, (2) a 33-percent cap on government support for development of new aircraft, and (3) limits on benefits from indirect support resulting from government-funded research. The parties also agreed to encourage other countries to adopt similar disciplines and to make an effort to expand coverage of the agreement to include all products covered in the 1979 GATT aircraft agreement.

U.S. Negotiating Objectives

A major objective of the U.S. aerospace industry in the UR was to ensure that the new Agreement on Subsidies and Countervailing Measures would clearly cover aerospace products, including LCA. In addition, the industry strongly opposed several of the elements of a revised multilateral aircraft agreement proposed by the Chairman of the GATT Civil Aircraft Subcommittee in November 1993. That agreement would have (1) covered all civil aircraft products, not just LCA: (2) imposed stronger disciplines on indirect support than those contained in the bilateral agreement: and (3) exempted, or grandfathered, all past Airbus supports.

Both the United States and the EU wanted to expand the country coverage of the bilateral agreement of July 17, 1992. Other signatories of the 1979 GATT aircraft agreement, such as Japan, and some nonsignatories, such as Russia, China, Korea, and Taiwan, were viewed as potential competitors to the United States and the EU over the long term. Thus, a multilateral agreement with disciplines similar to those in the bilateral agreement was seen as being in the long-term interest of both the United States and the EU.

With respect to expanding the coverage of the bilateral agreement to other products, however, the interests of the United States and the EU differed somewhat. U.S. engine companies, in particular, clearly did not want to be constrained by disciplines on indirect supports that were an integral part of the bilateral agreement; the U.S. negotiating position reflected the industry's opposition. EU negotiators, on the other hand, publicly supported expanding the coverage to other products. However, the true objectives of EU negotiators were somewhat unclear in this regard, given the fact that one of the two major European engine companies has a partnership arrangement with a U.S. engine company.

With respect to issues discussed in the Uruguay Round, the primary concern of the U.S. aerospace industry was ensuring that the new Agreement on Subsidies and Countervailing Measures would apply to the aerospace industry, including LCA. A long-standing dispute between the United States and the EU had concerned the venue or proper forum for disputes with respect to subsidies to aircraft. The U.S. position had been that the subsidies committee was the proper forum for discussing a subsidies complaint. The EU position had been that the existence of the 1979 GATT aircraft agreement meant that the proper forum for any dispute concerning aircraft was the aircraft committee.

During the negotiations to multilateralize the bilateral aircraft agreement, the EU had talked about the revised GATT aircraft agreement's being a "lex specialis," that is, a special law applicable to the civil aircraft sector. The EU proposal called for a provision to be inserted into the UR Agreement on Subsidies and Countervailing Measures (still under consideration at that time), to the effect that, for signatories of the new aircraft agreement, the new subsidies agreement would not apply to aircraft. The United States strongly opposed the EU position, stating that the new subsidies agreement should apply to the civil aircraft sector, just as the old subsidies agreement had applied.

Results of the Uruguay Round

At the conclusion of the Uruguay Round, the new Agreement on Subsidies and Countervailing Measures clearly covered the aerospace industry, including LCA. As part of an overall compromise, a few exceptions for aircraft were outlined in footnotes to the subsidies agreement. There was no new multilateral aircraft agreement, but there was a commitment to try to conclude, within a year, a new agreement based on the December 1993 revision of the GATT subcommittee Chairman's November 1993 proposal and other proposals.

To reflect some of the EU demands that civil aircraft be exempted from disciplines in the new subsidies agreement, two footnotes were inserted to article 6.1 of that agreement.[8] The first footnote stated that "since it is anticipated that civil aircraft will be subject to specific multilateral rules," the 5-percent threshold for presumed serious prejudice would not apply to civil aircraft. The new subsidies agreement would establish, in the case of a complaint against subsidies, a 5-percent ad valorem subsidization for industrial goods as the threshold for determining when serious prejudice to a trading partner's interest would be presumed to exist. The EU feared that the failure to obtain an exemption for civil aircraft would increase the likelihood that the United States could launch trade actions, since European support for the Airbus consortium may be found to exceed the 5-percent level.

The second footnote stated that "...where royalty-based financing for a civil aircraft program is not being fully repaid due to the level of actual sales falling below the level of forecast sales, this does not in itself constitute serious prejudice." A provision in article 6.1 had stated that "direct forgiveness of debt" by a government was one of the tests of serious prejudice. The inclusion of this footnote was significant because royalty-based financing, which is the primary method of European government support for Airbus, requires a company to pay back loans from the government based on the sales of its products.

The addition of the two footnotes to the subsidies agreement represented a compromise between the United States and the EU. The United States had originally demanded that the aircraft sector be covered by all the disciplines of the new subsidies agreement, while the EU had sought a complete exemption of the sector from that agreement.

A third footnote to the subsidies agreement also concerned civil aircraft. A provision of article 8.2[9] would allow governments to subsidize research and precompetitive development up to certain thresholds without facing the threat of trade action. However, the footnote would exempt aircraft from the nonactionable or "green light" subsidies category in research and development.

U.S. negotiators, and especially U.S. industry, believed that U.S. objectives were substantially achieved with respect to the aerospace industry.

[8]Article 6.1 dealt with the determination of "serious prejudice." See ch. 4 for a discussion of serious prejudice.

[9]Article 8 dealt with the identification of nonactionable subsidies.

Although pleased with the status quo, assuming the UR agreement is ratified, U.S. negotiators did commit themselves to try to conclude a multilateral agreement within a year. However, in a May 2, 1994, letter to the U.S. Trade Representative, the Aerospace Industries Association,[10] the two major U.S. LCA manufacturers, and the two major U.S. engine manufacturers, stated that negotiations should be limited to the extension to other countries of the disciplines contained in the bilateral agreement for LCA only. The chief USTR negotiator remains skeptical that a multilateral agreement will be reached soon.

Potential Impact of UR Agreement

The United States is the world's leading producer of aerospace products, and the new GATT UR agreement should not jeopardize this position. The section of the new agreement that would be most important to the U.S. aerospace industry is the Agreement on Subsidies and Countervailing Measures. Although this section has been modified by three footnotes pertinent to this industry, only the two footnotes pertaining to the determination of serious prejudice would soften the constraints of the new code; the green-lighting footnote would eliminate a potential loophole.

The new features of the GATT agreement, such as the improved dispute settlement procedure, the expansion of the list of prohibited export subsidies, tightened rules on domestic subsidies, and the broader country coverage, should enhance the U.S. ability to counter foreign government subsidies to the aerospace sector and their resulting trade distortions.

Issues to Watch

The GATT aircraft subcommittee has agreed to try to conclude a new multilateral agreement on civil aircraft before the end of 1994. If the negotiations result in a new agreement that potentially changes the current international trade regime for civil aircraft, the issue may warrant further attention from Congress.

[10]The Aerospace Industries Association is the nonprofit trade association representing U.S. manufacturers of commercial, military, and business aircraft, helicopters, aircraft engines, missiles, spacecraft, and related components and equipment.

Future World Trade Organization Issues

New Global Economy Links Trade to Other Policy Issues

Capital, goods, services, and information now flow more and more easily across national frontiers, in part because of advances in technology and transportation. Businesses are increasingly spreading operations among more than one country, so traditional assumptions about the national origin of goods no longer apply. And, as a recent article in the OECD Observer pointed out, successive General Agreement on Tariffs and Trade (GATT) rounds have reduced the importance of border restrictions as trade-distorting impediments. Consequently, certain national domestic policies—implemented largely through internal laws and regulations—received attention during the negotiations of the Uruguay Round as potential barriers to international commerce. These issues included trade and the environment, labor rights, and competition (antitrust) policies.

Various complex questions have been raised in each area. As noted, we discussed trade and the environment in chapter 6. Concerning labor rights and competition policy issues, while we did not attempt to analyze each one in depth, we have summarized in this appendix the main ideas and concerns. The United States and other countries have already identified them as among the next order of topics for negotiation under the future World Trade Organization (WTO).

Labor Rights Seen as Needing Consideration

In the last weeks of negotiations, the United States and other nations raised concerns about how some nontrade issues should be reconciled with trade policies in the new global economic environment. In public statements and legislative initiatives, U.S. administration and congressional leaders pressed for consideration of labor rights policies in international trade in the new WTO and in U.S. law.

The move by the United States, along with France, to include consideration of the labor rights issue late in the negotiations met considerable resistance at the April GATT signing. But the ministers decided that the preparatory committee set up to facilitate the functioning of the new WTO when it comes into effect should examine several critical issues, including the relationship between the trading system and internationally recognized labor standards. The issue remains controversial among the GATT signatories.

Competition Policies Seen as Needing Consideration

Another policy area linked by several parties to the Uruguay Round late in the negotiations was competition policy. Outlining U.S. concerns, the

President identified antitrust and other competition policies as one of the issues that needs to be explored after the completion of the Uruguay Round. A central concern is that foreign business practices may be anticompetitive, even inconsistent with U.S. antitrust laws, and may place U.S. firms at a disadvantage in overseas markets. Administration officials have publicly mentioned trade associations in Japan and the linked relationships between companies there as being problematic. As we pointed out in our August 1993 report on foreign business practices, different historical experiences and government/business relations have led to different perspectives on matters such as competition policy.[1] The United States fears that such differences can further lead to competitive advantages for countries that have less stringent competition or antitrust policies and regimes.

Another concern is the authority of national regulatory and enforcement organizations to administer provisions of national law against foreign entities or business activities in foreign markets. With multinational corporations conducting business worldwide, and with the advent of international mergers, private firms' activities transcend the jurisdiction of individual national governments. National authorities (such as the U.S. Department of Justice and similar foreign bodies) have recognized the need to be able to determine a variety of issues in individual cases, such as which authority should take action, or in what order they should take action, against alleged violations.

The Organization for Economic Cooperation and Development has been analyzing the relationship between trade and competition policies as part of its work program on trade issues of the 1990s. In the United States, an interagency working group has begun to analyze U.S. trade and competition policy interests that would be advanced through multilateral negotiations.

The Agreement on Trade-Related Investment Measures, signed as one of the new round agreements, requires the new WTO's Council for Trade in Goods to consider whether to complement the Trade-Related Investment Measures agreement by establishing provisions on investment policy and competition policy. And the World Trade Organization's preparatory committee previously cited is also supposed to examine the issue of trade and competition policy, including rules on export financing and restrictive business practices. In addition, administration officials have already stated

[1]See Competitiveness Issues: The Business Environment in the United States, Japan, and Germany (GAO/GGD-93-124, Aug. 9, 1993).

the intention to act unilaterally to target anticompetitive practices by employing U.S. antitrust law in foreign countries that harm U.S. exports.

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Glossary

Accession	Accession is the process by which a country becomes a member of an international agreement, such as the General Agreement on Tariffs and Trade or the European Union. Accession to GATT involves negotiations to determine the specific obligations a nonmember country must fulfill before it will be entitled to full GATT membership benefits.
Actionable Subsidies	Actionable subsidies are those subsidies that are not specifically prohibited under the subsidies agreement, but against which GATT remedies can be sought if they are found to distort trade. Trade distortion occurs if (1) subsidized imports cause injury to a domestic industry (e.g., depress prices or threaten to do so); (2) subsidies nullify or impair benefits owed to another country under WTO; or (3) subsidized products displace or impede imports from another country or another country's exports to a third country market.
Ad Valorem Subsidization	Ad valorem subsidization is a percentage amount that is determined by dividing the appropriately allocated and amortized financial value of the subsidy by the sales of the product in question.
Ad Valorem	Ad valorem is any charge, tax, or duty that is applied as a percentage of value.
Advisory Committee on Trade Policy and Negotiations	ACTPN is a group (membership of 45; 2-year terms) appointed by the President to provide advice on matters of trade policy and related issues, including trade agreements. The 1974 Trade Act requires ACTPN's establishment and its broad representation of key economic sectors affected by trade.
Aggregate Measure of Support	The aggregate measure of support is the sum of all domestic support measures provided in favor of agricultural producers (including price support and direct payment to producers), rather than on the basis of support to individual commodities.
Anticircumvention Laws	Auticircumvention laws seek to eliminate the ability of exporters to evade or avoid antidumping duties by changing the sites of a product's assembly. Circumvention of antidumping orders has resulted in respondents having

	to bring repeated dumping cases against the same defendants after they have moved their assembly operations to a new site.
Antidumping Measures	Antidumping measures involve a duty or fee imposed to neutralize the injurious effect of unfair pricing practices.
Antidumping Laws	Antidumping laws involve a system of regulations to remedy dumping.
Applied Tariff Rate	An applied tariff rate is a rate that a GATT member country actually applies to imports from its trading partners.
Benefit-to-Recipient Standard	A "benefit-to-recipient" standard is a method for valuing subsidies by which the amount of the subsidy is determined in reference to a comparable commercial benchmark that would otherwise be available to the subsidy recipient within the jurisdiction in question.
Bilateral Steel Agreements	The United States has negotiated 10 bilateral steel agreements with major steel trading partners. Under BSAs, the governments agreed to reduce or eliminate state intervention—that is, domestic subsidies and market barriers.
Bound Tariff Rates	Bound tariff rates are most-favored-nation tariff rates resulting from GATT negotiations and thereafter incorporated as integral provisions of a country's schedule of concessions. The bound rate may represent either a reduced rate or a commitment not to raise the existing rate or a ceiling binding.
Cairns Group	The Cairns Group, established in August 1986, is an informal association of agricultural exporting countries. The group's members include Argentina, Australia, Brazil, Canada, Chile, Colombia, Hungary, Indonesia, Malaysia, New Zealand, the Philippines, Thailand, and Uruguay. The Cairns Group countries account for one-third of world farm exports.
Competitive Disadvantage	The TRIMs agreement contains a provision concerning "competitive disadvantage." This provision would allow countries to apply existing

TRIMs to new investing firms for the duration of the transition period when (1) the products of such investment were similar to the products of the established enterprises and (2) it was necessary to avoid distorting the conditions of competition between the new investment and the established enterprises.

Compulsory Licensing

Compulsory licensing is an authorization by a government that permits someone, without the consent of the patent owner, to make, use, or sell a patented product; or to use a patented process; or to use, sell, or import the product produced by a patented process. Compulsory licenses are granted by governments for many reasons, among them to permit local production of a product if the patent owner is not "working" (i.e., manufacturing the product) the patent in the country within a specified period of time or to allow the holder of a patent to exploit the patent which, absent a license, would infringe on an earlier granted patent.

Constructed Value

Constructed value is a means of determining fair or foreign market value when sales of the specific or the similar merchandise do not exist or, for various reasons, cannot be used for comparison purposes. In U.S. antidumping law, the "constructed value" consists of (1) the cost of materials and fabrication or other processing employed in producing the merchandise, (2) the general expenses of not less than 10 percent of material and fabrication costs, and (3) a profit of not less than 8 percent of the sum of the production costs and general expenses.

Contracting Parties

Contracting parties are the signatory countries to GATT. These countries have accepted the specified obligations and privileges of the GATT agreement.

Copyright

A copyright is a property right in an original work of authorship that arises automatically upon creation of such a work and belongs, in the first instance, to the author. A copyright owner has the exclusive right, subject to certain limited privileges afforded to users, to reproduce the work; to prepare translations, abridgements, or other adaptations of the work; to distribute copies of the work (or adaptations) to the public; and to publicly perform (in person or by broadcasts and the like) the work.

Cost of Production	Cost of production is a term used to refer to the sum of the cost of materials, fabrication, and/or other processing employed in producing the merchandise sold in a home market or to a third country, together with appropriate allocations of general administrative and selling expenses. The cost of production is based on the producer's actual experience and does not include any mandatory minimum general expense or profit as in "constructed value."
Cost-Based Accounting Rates	Cost-based accounting rates are rates set by regulatory bodies and reflect the actual cost of the service provided.
Counterfeiting	Counterfeiting refers to the unauthorized and deliberate duplication of another's trademark.
Countervailing Duty	A countervailing duty is a special duty imposed by an importing country to offset the economic effect of a subsidy and thus prevent injury to a domestic industry caused by a subsidized import.
Cumulation	Under the practice of cumulation, the effects of imports from several sources are combined to determine the existence of injury on a domestic industry. Cumulative assessment of injury can occur when imports from many sources compete simultaneously with each other and a domestic industry and where all of the imports are subject to dumping or countervailing duty investigations. Over the years, virtually every user—including the United States—has found the practice to be practical or critical under certain circumstances when dumped imports from multiple countries are believed to be collectively causing harm to a domestic industry.
De Minimis Dumping or Subsidy Level	De minimis dumping is the level below which a dumping margin or subsidy is considered to be negligible. AD or countervailing duty actions are terminated in cases where the margin of dumping or level of subsidy is below the de minimis level.
Diversionary Dumping	This occurs when foreign producers sell to a third country market at less than fair value and the product is then further processed and shipped to another country.

Due Process	Due process involves fair, reasonable, and orderly proceedings including proper notice; the right to be heard; the right to be present before the tribunal that pronounces judgment; the opportunity to enforce and protect one's rights; and the right of controverting, by proof, every material fact that bears on the question or right in the matter involved.
Dumping	Dumping is the sale of a commodity in a foreign market at a lower price than its fair market value. Dumping is generally recognized as unfair because the practice can disrupt markets and injure producers of competitive products in an importing country. Article VI of GATT permits imposition of antidumping duties equal to the difference between the price sought in the importing country and the normal value of the product in the exporting country.
Dumping Margin	The dumping margin is the amount by which the imported merchandise is sold in the United States below the home market or third-country price or the constructed value (that is, at less than its "fair value"). For example, if the U.S. "purchase price" is $200 and the fair value is $220, the dumping margin is $20. This margin is expressed as a percentage of the U.S. price. In this example, the margin is 10 percent.
Dunkel Text	In December 1991, GATT Director General Arthur Dunkel proposed a 450-page draft final text, and negotiators agreed to use the text as a basis for their continuing talks. This Dunkel text also set out much of the structure and detail of the final Uruguay Round agreement that was reached 2 years later.
Duty	A duty is a tax imposed on imports by the customs authority of a country. Duties are generally based on the value of the goods (ad valorem duties), some other factors such as weight or quantity (specific duties), or a combination of value and other factors (compound duties).
Dynamic Gains	These gains increase the rate of economic growth. Even a small change in the growth rate can lead to a substantial cumulative effect on gross domestic product. Thus, empirical assessment of the dynamic effects of trade policy changes can yield substantially larger estimates than those based on static models. The growth effects of trade liberalization can flow

	through a variety of channels, such as improved access to specialized capital goods, human-capital accumulation, learning-by-doing, transfer of skills, and new product introduction.
European Free Trade Agreement	EFTA is a regional trade group established in 1958 by the Treaty of Stockholm and originally comprised of Denmark, Sweden, Norway, the United Kingdom, Austria, Portugal, Switzerland, Finland, and Iceland. The United Kingdom, Portugal, and Denmark have since left EFTA to join the European Union. EFTA has mainly been concerned with the elimination of tariffs with respect to manufactured goods originating in the EFTA countries and traded among them.
Enhanced Telecommunications	Enhanced, or value-added, telecommunications includes services such as E(electronic)-Mail, data processing, and "store and forward" services.
Ex Parte Proceedings	Ex parte proceedings are on one side only; by or for one party; or done for, in behalf of, or on the application of, one party only. A judicial proceeding, order, injunction, etc., is said to be ex parte when it is taken or granted at the instance and for the benefit of one party only, and without notice to, or contestation by, any person adversely interested. "Ex parte," in the heading of a reported case signifies that what follows is that of the party upon whose application the case is heard.
Export Subsidy	An export subsidy is generally a subsidy that is provided on the basis of export performance.
Exporting Restriction	An exporting restriction limits company exports, or sales for export, through placing a restriction on a particular product, a volume or value of products, or a proportion of the volume or value of the company's local production.
Foreign Exchange Balancing	Foreign exchange balancing restricts a company's imports by limiting the company's access to foreign exchange to pay for the goods to some proportion of the amount of foreign exchange earned by the company.

Foreign Direct Investment

Foreign direct investment implies that a person in one country has a lasting interest in and a degree of influence over the management of a business enterprise in another country. In most countries, some percentage of ownership of a foreign company is required. In the United States, foreign direct investment is the ownership or control, directly or indirectly, by a single foreign person (an individual, or related group of individuals, company, or government) of 10 percent or more of the voting securities of an incorporated U.S. business enterprise or an equivalent interest in an unincorporated U.S. business enterprise, including real property. Such a business is referred to as a U.S. affiliate of a foreign direct investor.

General Agreement on Trade in Services

International rules governing trade and investment in the services sector. GATS is the first multilateral, legally enforceable agreement covering trade and investment in the services sector. For the first time, services would be subject to many of the same rules that cover trade in goods. The GATS framework, however, is structured somewhat differently from GATT itself. For example, market access and national treatment are not automatically provided for, as they are in GATT. These two principles would become binding commitments only in services sectors that countries schedule in bilateral negotiations under the GATT's auspices.

General Agreement on Tariffs and Trade

GATT was created in 1947 as an interim measure pending the establishment of the International Trade Organization, under the Havana Charter. The International Trade Organization was never ratified by Congress. Operating in the absence of an explicit international organization, GATT has provided the legal framework for international trade, with its primary mission being the reduction of trade barriers.

Generalized System of Preferences

GSP is a program under which the United States grants duty-free treatment to selected imports from designated beneficiary developing nations and territories. The program began in 1976, when the United States joined with 19 other members of the Organization for Economic Cooperation and Development to promote the economic growth and development of developing countries. The central objective of the GSP program is to promote the economic growth and development of beneficiary developing countries.

Global Sourcing Companies	Global sourcing companies are firms that use imported goods as inputs for production.
Grey Area Measures	Grey area measures involve actions countries take outside GATT safeguard laws to address import surges. Such measures include voluntary restraint agreements, quotas, tariff increases, and agreements among countries to trade specific goods at specific prices.
Harmonized Formula Approach	The harmonized formula applies a formula to cut high tariff rates, called "peak" tariffs, by a greater percentage than applied to low tariffs. Thus, the goal is to lower tariffs and to achieve more consistent tariff levels among contracting parties.
Industrial Policy	Industrial policy consists primarily of the mechanisms used by a government to attain various sectoral goals. The basic focus of industrial policy is microeconomic in that it directs attention to specific industrial sectors and attempts to identify the best way to encourage growth or adjustment to the decline of a particular sector. Various tools employed to encourage industry to grow or rationalize include credit rationing, favorable access to investment funds and foreign exchange, the use of rationalization cartels, joint research and development programs, control over licensing of technology, use of commercial policy (e.g., tariffs, quotas, export controls, etc.), and administrative guidance.
Industrial Designs	Industrial designs are the distinctive and aesthetic aspects of product style and packaging. TRIPs would provide protection for independently created industrial designs that are new or original, but would allow countries to refuse protection if the designs did not significantly differ from known designs. With respect to textile designs, countries would have to ensure that requirements for securing protection, in particular in regard to any cost, examination, or publication, would not unreasonably impair the opportunity to seek and obtain such protection. Countries could meet this obligation through industrial design law or through copyright law.
Industry Sector Advisory Committees	ISACs are a part of the Industry Consultations Program for Trade Policy Matters, which is an advisory committee structure created by the Trade Act of 1974; expanded by the Trade Agreements Act of 1979; and amended by the Omnibus Trade and Competitiveness Act of 1988. The program is

operated jointly by Commerce and the U.S. Trade Representative. The present structure consists of 17 Industry Sector Advisory Committees, which include committees on (1) aerospace equipment; (2) capital goods; (3) chemicals and allied products; (4) consumer goods; (5) electronics and instrumentation; (6) energy; (7) ferrous ores and metals; (8) footwear, leather, and leather products; (9) building products and other materials; (10) lumber and wood products; (11) nonferrous ores and metals; (12) paper and paper products; (13) services; (14) small and minority business; (15) textiles and apparel; (16) transportation, construction, and agricultural equipment; and (17) wholesaling and retailing.

Intellectual Property Rights

Patents, trademarks, and copyrights are the three primary forms of intellectual property rights in worldwide use. They encourage the introduction of innovative products and creative works to the public by guaranteeing their originators a limited exclusive right, usually for a specified period of time, to whatever economic reward the market may provide for their creations. Other types of intellectual property rights include trade secrets, "mask works," and industrial designs (i.e., the ornamental aspect of a useful article).

International Trade Commission

ITC is an independent federal government agency that conducts statutory trade-related investigations and studies and reports on a wide range of international trade and economic policy issues for the President and Congress.

Investigation Initiation

Investigation initiation is the procedural action by which a GATT member formally commences an investigation.

Large Civil Aircraft

Large civil aircraft is defined as aircraft for 100 or more passengers, or its equivalent cargo configuration.

Layout-Designs (Topographies) of Integrated Circuits

Layout-designs are the patterns on the surface of a semiconductor chip. They are also referred to as "mask works." Because the designs of computer chips are easily copied, most developed countries have established a unique form of protection that combines copyright and patent principles.

Linear Approach	Under the linear formula, all rates in the tariff schedules would be reduced across the board by a specific formula, such as a certain percentage.
Local Content Requirements	Local content requirements are the most common form of TRIM. Local content requirements oblige an investor to purchase or use a specific amount of inputs from local suppliers. Local content requirements are used in an attempt to ensure that the investment increases local employment and develops physical and human capital.
Margin of Dumping	The margin of dumping is the percent by which the price charged for the same or a like product in the home market of the exporter exceeds the export price.
Mask Works	Mask works are the patterns on the surface of a semiconductor chip.
Material Injury	Under the Tariff Act of 1930, as amended, "material injury" is defined as "harm which is not inconsequential, immaterial or unimportant." In determining material injury, ITC considers domestic consumption, U.S. production, capacity, capacity utilization, shipments, inventories, employment, and profitability.
Material Injury Test	In U.S. countervailing duty investigations, ITC is responsible for determining whether subsidized exports cause material injury to a domestic industry of an importing country. An affirmative material injury determination is usually required when imposing countervailing duties.
Most-Favored-Nation Treatment	MFN is a principle of nondiscrimination that commits all GATT signatories to extend the same treatment for all other signatories.
National Treatment	National treatment is the act of treating a foreign product or supplier no less favorably than domestic suppliers.
Net Foreign Direct Investment	Net FDI equals the value of any new FDI that enters a country in 1 year minus any reduction in FDI in that country in that year.

Nonactionable Subsidies	Nonactionable subsidies are permissible subsidies, against which GATT remedies cannot be sought as long as they are structured according to certain criteria.
Nontariff Trade Barriers	GATT has developed more than 40 categories of nontariff barriers. Most of them are measures used at the border to restrict the inflow of foreign goods. Major categories of nontariff barriers include quantitative import restrictions such as quotas, voluntary export restraints, and price controls.
Offsets	Offsets are various concessions sometimes required by a purchaser. They include requiring bidders to provide (1) local content in goods, (2) technology transfer to the purchaser, (3) some investment in the country, or (4) trade in other areas.
Patent	A patent protects an invention by giving the inventor the right to exclude others from making, using, or selling a new, useful, nonobvious invention during a specific patent term.
Plurilateral Agreements (Annex IV Agreements)	Plurilateral agreements are those Uruguay Round agreements not signed by all WTO members. These include the Agreement on Trade in Civil Aircraft, the Agreement on Government Procurement, the International Dairy Arrangement, and the Arrangement Regarding Bovine Meat.
Predatory Dumping Practices	Predatory dumping practices involve large and economically powerful firms using market leverage to drive small firms out of business, thus reducing competition so the predatory larger firms can then raise prices and reap monopoly profits.
Price-Averaging Calculations	Price-averaging calculations are used in antidumping cases to compare the exporting country's home market price for the subject merchandise to the export price for the same merchandise. This comparison may be based on (1) the weighted average of the home market prices to the weighted average of the export prices; and (2) individual to weighted average prices, in cases where it can be shown that spot dumping is occurring or where data are not available. In addition, individual home market prices may be compared to individual export prices.

Primary Product	A primary product is a farm, forest, or fishery product.
Recidivism	Recidivism is a tendency to relapse into a previous condition or repeat a mode of behavior.
Request-Offer Approach	Under the request-offer approach, a contracting party submits requests for concessions on tariff reductions from its trading partner which, in turn, submits its offer for concessions. The offers are tabled and negotiated by the parties' representatives.
Safeguard	A safeguard is a temporary import control or other trade restriction that a country imposes to prevent injury to domestic industry from increased imports. It is designed to facilitate the adjustment of domestic industries to the influx of fairly traded imports.
Sanitary and Phytosanitary Requirements	Sanitary and phytosanitary regulations and barriers are measures taken to protect human, animal, or plant life or health.
Serious Prejudice	Under the proposed subsidies agreement, there would be a special category of actionable subsidies that would have a high likelihood of being trade distorting. The proposed agreement lays out specific criteria for demonstrating when a country's use of such subsidies would have adversely affected another country's trade interests through price or volume/market share effects (referred to in the agreement as "serious prejudice"). The proposed agreement would create an obligation to withdraw the subsidy or remove the adverse effects when they are identified.
Services	Services, as defined in the Trade and Tariff Act of 1984, consist of economic activities whose outputs are other than tangible goods, including businesses such as accounting, advertising, banking, engineering, insurance, management consulting, retail, tourism, transportation, and wholesale trade.
Specificity Provision	Under the proposed subsidies agreement, subsidies must be "specific" in order to be actionable. A subsidy is considered "specific" to a firm or an

	industry, or a group of firms or industries, if the government limits access to the assistance in law or in fact.
Standard of Review	A standard of review refers to the criterion that dispute panels use to determine the merits of a given case. The standard is used to define the appropriate level of review, given the issues involved in that case.
Standing	Standing refers to whether a party "has a sufficient stake in an otherwise justifiable controversy to obtain judicial resolution of that controversy." With regard to antidumping proceedings under GATT article VI, standing refers to the right of a party or parties in the importing country to petition for relief under national AD laws or to support a petition.
Standstill Commitment	A standstill commitment involves a commitment of GATT contracting parties not to impose new trade-restrictive measures during the Uruguay Round negotiations.
Stare Decisis	Stare decisis is a U.S. common law concept that requires judges to hand down decisions that are consistent with judicial precedent.
Start-Up Costs	Start-up costs refer to the high per unit costs that are incurred when beginning a new production line. Costs will appear to be high until normal production levels can be achieved. For example, the initial per unit cost of producing a semiconductor is high. As production increases and more units are produced, however, the cost per unit drops.
Static Gains	Static gains stem from the increased efficiency of resource allocation and improved consumption possibilities. Additional gains from trade may result from increasing returns to scale, and from increased product and input variety for consumers and producers. Static gains imply a change in the amount of aggregate output but not its growth rate. Static gains from trade are relatively small as a percent of GDP in empirical studies of trade liberalization.

Subsidy	A subsidy is generally considered to be a bounty or a grant provided by a government that confers a financial benefit on the production, manufacture, or distribution of goods or services. Government subsidies include direct cash grants, concessionary loans, loan guarantees, and tax credits.
Sunset	"Sunset" refers to the duration of antidumping or countervailing duty orders.
Tariff	A tariff is a tax placed on imported goods to raise revenues and protect domestic industries from foreign competition.
Tariff Escalation	Tariff escalation occurs whenever a country imposes substantially higher duties on partially and fully processed goods than on their underlying raw materials.
Tariff Peaks	Tariff peaks refer to tariffs above 15 percent.
Tariff Reduction	Tariff reduction occurs when tariffs are assigned relative weights based on their value, and those weights are totaled and then averaged to achieve a single overall reduction amount.
Tariff Schedules	The initial GATT consisted both of schedules of tariff commitments, one for each of the contracting parties, and a set of rules drafted primarily to protect the evasion of tariff commitments. Tariff schedules are a long list of products containing various tariff rates. Each contracting party is committed not to raise its tariffs above the duty level contained in the schedule.
Textile Trade Parameters	The textile trade parameters established through bilateral agreements always include specific restraints on one or more products. They may also indicate the amount of trade growth allowed, the market access opportunities made available, the "aggregate" ceilings set on total textile and apparel imports, and the agreement made with the bilateral partner that its exports will not be restrained to the benefit of imports from countries with which the United States does not have textile agreements.

The Group of Seven	The Group of Seven includes the United States, Canada, the United Kingdom, France, Germany, Italy, and Japan.
The Quad	During the Uruguay Round, the Quad consisted of the United States, Japan, the EU, and Canada.
Third-Country Dumping	Third-country dumping occurs when country X dumps its products in country Y and causes injury to country Z's producers, who are competing for the same market but at "fair" prices.
Tokyo Round Codes	The Tokyo Round codes are an extension of GATT in that they explicitly extend trade discipline in specific new areas, or define more precisely existing discipline and rules. The difference between the GATT approach and the codes' approach is one of degree. In large part the codes are used as an instrument because amending GATT has proven difficult.
Trade-Related Investment Measures	Trade-related investment measures require specific behavior from investors that has an effect on trade. TRIMs are placed on foreign direct investment by governments in an effort to influence investment decisions such as sourcing, production, and market locations, and to increase the likelihood that the host nation will capture the benefits expected from the investment. TRIMs can be either mandatory, or can take an incentive form as actions that are necessary for an investor to undertake in order to obtain some type of advantage.
Trade-Weighted Basis	The trade-weighted basis is the average tariff computed by weighing each tariff rate by the dollar value of imports at that rate relative to the total value of imports. Tariffs on individual commodities in the UR agreement were reduced sufficiently such that the new tariff schedule would result in a total trade-weighted tariff reduction of 33 percent. Individual commodity tariffs were not equally affected, however, as many would be reduced to zero, while others would be left unchanged.
Trade Secret	A trade secret is proprietary information that is used in industry or commerce. Trade secret protection can encompass a broad range of manufacturing processes, testing, materials, and other know-how making

	up the most valuable resources a company has to license. This protection is regarded as vital to the coverage of new technology, particularly technology that may not satisfy the rigorous standards of patentability.
Trade-Balancing Requirements	Trade-balancing requirements allow an investor to import goods only up to a specified amount, which is determined by the investor's locally produced exports. Such requirements are used by governments in an effort to maintain or achieve a favorable balance of trade.
Trademark	Manufacturers or merchants use trademarks to identify their goods and distinguish them from others. Service marks perform the same function for services. Examples of these marks include personal names, letters, numerals, figurative elements, and combinations of colors.
Transparency	Transparency refers to the extent to which laws, regulations, agreements, and practices affecting international trade are open, clear, measurable, and verifiable.
Two-Tiered Pricing	Two-tiered pricing occurs when a government charges a higher price for export than for domestic sales of a scarce natural resource input, thereby providing a competitive advantage to a domestic industry using this input.
Unfair Trade Practices	Unfair trade practices include the dumping of an exported product below the price charged for the same good in the "home" market of the exporter, or the subsidizing of a product by a government.
Uruguay Round	The Uruguay Round was the eighth and most recent round of multilateral trade negotiations held under the auspices of the General Agreement on Tariffs and Trade. These negotiations were initiated in Uruguay in September 1986 and concluded in April 1994.
Voluntary Restraint Agreement	A voluntary restraint agreement is an accord between countries to limit trade in specific goods. They are administered by the exporter and may or may not be formally negotiated.

World Intellectual Property Organization

WIPO is a specialized United Nations agency that promotes the protection of intellectual property throughout the world through cooperation among countries and ensures administrative cooperation among the intellectual property Unions. WIPO administers a number of international agreements on intellectual property protection, including the Berne Convention for the Protection of Literary and Artistic Works and the Paris Convention for the Protection of Industrial Property.

Zero-for-Zero Tariffs

The United States introduced the concept of zero-for-zero tariffs in March 1990, when it tabled a proposal advancing the elimination of tariffs in certain sectors through the request-offer approach.

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