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The Significance to Viet Nam of Membership in the World Trade Organization

Koichiro Fukui[1]
Development Bank of Japan

Takao Aiba
Hiroko Hashimoto
The Japan Economic Research Institute

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[1] Employed by the Development Bank of Japan at the onset of this study, but currently working as General Manager of KDDI Co. Ltd.

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Introduction

In January 1995, the year in which the government of Viet Nam applied for membership in the World Trade Organization, diplomatic relations were restored between Viet Nam and America. After a series of bilateral and multilateral negotiations, the two nations concluded a trade pact in July of 2000. Viet Nam has done much to promote the development of its national economy through trade liberalization and expansion. Its recent efforts, however, leave one with the impression of a nation being carried along on the worldwide tide of liberalization, following the lead of others without having a distinct trade policy of its own. Having rejoined the community of nations, Viet Nam is now poised to welcome the trade and investment that it needs for its development. But the feasibility of this objective will depend on how the nation accedes to such international trade agreements as are exemplified by the WTO, AFTA and APEC. There is, also, the question of how much Viet Nam can develop its industry within the confines of these international agreements. In the absence of some kind of government support, the nurturing of industries that depend on a capital-intensive accumulation of technology is a difficult proposition. The policies that Viet Nam adopts to develop its industries will have to be compatible with those it takes to liberalize trade.

A number of Viet Nam's ASEAN neighbors have renegotiated with the WTO or AFTA, or changed their customs tariffs when necessary, to deal with those organizations' measures that reflected on a national industrial development policy. Such a case came up this year in the automobile industry. Thailand, Indonesia, Malaysia and the Philippines had been nurturing their automotive industries for decades. However, they had also promised the WTO to abolish local content requirements by 2000. Thailand and Indonesia duly eliminated the requirements last year, but, at the same time, raised the tariff on auto parts to protect their domestic parts producers from foreign competition. Malaysia and the Philippines applied to the WTO for an extension (two years in the former case; five in the latter) of local content regulations. Malaysia also asked AFTA to extend from 2003 to 2005 the deadline for lowering tariffs on automotive imports from other ASEAN nations.

In another case that drew attention last year, Mitsui Chemicals withdrew from Mitsui Vina, a large-scale chemical plant—Viet Nam's first—with the capacity to produce eighty thousand tons of polyvinyl chloride per year. Having only recently been put into operation, Mitsui Vina was struggling to cope with substantial fixed costs and a worsening market. In other countries, the natural policy would be to ease the burden for some years by means of tax measures. Viet Nam, however, chose to forego this course, explaining that it needed to keep its promises to other nations. Apparently the government was referring to its commitment to AFTA to set polyvinyl chloride tariffs at zero, or at a very low level. Its decision was a clear case of putting the cart before the horse. What moved Viet Nam to set its polyvinyl chloride tariff at such a level in the first place —considering that AFTA did not require tariff reduction until 2006? Furthermore, why didn't Viet Nam renegotiate with AFTA once the problem arose? Polyvinyl chloride plants are usually the first to be constructed in a petrochemical complex. Other ASEAN member countries have protected such plants up to now with

tariffs of twenty to thirty percent in the early stages. The Philippines, for which the AFTA deadline is 2003, now protects its polyvinyl chloride industry. Thanks to the government's protective tariff of twenty percent, Philippine Resins Industries, which went into operation in 1999, is performing well with an annual output of seven thousand tons; plans are being considered to raise this to 140 thousand tons.

In negotiating for membership in the WTO, Viet Nam must come equipped with a long-term vision for each of its industries, and, on the part of its industrial policy planners, a clear understanding of the WTO as it stands today. Regarding the six major capital-intensive industries - iron and steel, petroleum refining, petrochemicals, urea fertilizers, cement, and automobiles - the authors, in another paper prepared also at this time, consider several traditional ideas and alternatives based on long-term scenarios. The present paper was prepared in order to describe the existing WTO and present an accurate picture of what membership in the organization would mean to Viet Nam. We also hope to shed light on the industrial policies that would be feasible for Viet Nam under the WTO regime, as well as how it might negotiate with the WTO to reflect long-term development visions for each industry. In Section I, we describe the significance to Viet Nam of membership in the WTO and the tasks it will have to address to make membership a reality. In Section II, we present an outline of the WTO today.

Section I. WTO Membership and Viet Nam: Issues and Significance

1. The benefits of WTO membership

As of February 2000, the WTO had an official membership of 135 countries.[2] Another thirty countries and regions had applied for admission. What did all these countries hope to gain by acceding to the WTO? Three principle benefits stand out at once.

① When problems or disputes arise over trade, the WTO provides its members with common standards, criteria, and forums for their constructive resolution.

② By developing their domestic trade and investment environments on the basis of common rules, members gain easier access to multilateral trade and world markets.

③ Trade promotion serves to stimulate economic growth.

A number of additional benefits apply to Viet Nam specifically.

① Viet Nam would enjoy most-favored-nation status in trade with all WTO members.

② Engagement with the free trade system would encourage Viet Nam in its domestic economic reforms.

③ Opportunities would open for technology transfer.

④ The world market for Vietnamese goods would expand.

⑤ Viet Nam would gain greater status in the international community.

⑥ International rules would provide the means to resolve trade disputes which would have been impossible for Viet Nam to handle on its own.

However, benefits like these do not come without a price. In Viet Nam's case, this would be the limitations that membership would place on domestic industrial policy. Each of the capital-intensive industries that the Vietnamese government is trying to develop—whether iron and steel, petroleum refining, petrochemicals, urea fertilizers, cement, or automobiles—remains either nonexistent in Viet Nam, or in an immature state that renders it largely noncompetitive in terms of price. Should Viet Nam shift completely to the free trade system, it is highly questionable whether the firms that do exist could continue to develop or even remain viable. A country such as Viet Nam, with little in the way of industrial infrastructure or supporting industry, is hardly in a position to compete for foreign investment with countries that have more to offer. Viet Nam's industrialization efforts are likely to be placed under a variety of restrictive conditions with the nation's engagement in the free trade system. It is essential that the nation recognize that for all the benefits it reaps from membership in the WTO, there are other things that will be lost. As other countries have learned to their dismay, government protection of immature industries is not always well received. Clearly, some form of government support will

[2] On September 8, 2000, the number rose to 138 countries and regions.

be necessary to launch industries that are capital-intensive, depend on external markets, or require a great deal of learning by doing. It should be remembered, however, that by directing support toward capital-intensive industries, the government may be withholding needed capital from the light-industrial sector in which Viet Nam is seen as having a comparative advantage. This, of course, would offset the benefits such support would bring. Viet Nam must seek a balanced policy mix that accurately reflects both benefits and drawbacks.

2. Obligations of WTO member countries

To enjoy the advantages that come with membership in the WTO, a member country must fulfil certain commitments. Like all other member countries, Viet Nam would be obligated upon accession to abide by the WTO Founding Agreement and the provisions on goods, services and intellectual property rights set down in Annexes 1 through 3 of the Agreement. Violations are punished strictly by sanctions from other member countries, which the violator is obliged to accept (see Section II-1 for details).

Since membership entails such serious obligations, a long and difficult negotiating process is required before an application is approved (for an explanation of the approval process, see Section II-2-7). China, for example, officially applied for membership in the GATT in 1986. When the WTO was launched in 1995, Beijing had hoped to be a founding member but was rejected. Now, some fourteen years after its initial application, China has at last entered the final negotiating process for WTO membership. The approval process involves both bilateral and multilateral negotiations. In China's case, the agreements reached in bilateral negotiations with Japan and the United States in 1999 led to agreements or compromises in negotiations with Australia, Canada, Chile, Cuba, Venezuela, Brazil, India and other countries in the same year. This year, 2000, finds China in the midst of bilateral consultations with twelve countries, including Thailand, Mexico and Argentina, and the EU. Since Viet Nam has concluded negotiations with just one country—the United States—it has a long road ahead before it can be accepted as a member of the WTO.

Once admitted to the organization, member countries are strictly required to abide by the rules set down in WTO agreements. When a member accuses another of a violation, the matter is put before a dispute settlement body established to mediate between alleged violators of rules and those that have sustained damage as a result of the violation. This system allows for the speedy settlement of bilateral disputes (see Section II-3 for a discussion of the dispute settlement mechanism). The existence of a neutral, third-party mediator makes it possible for least-developed countries like Viet Nam, though neither economically nor politically powerful, to cross swords with industrialized countries on an equal footing. For this reason, this is considered one of the more important benefits of membership.

3. Rules to be observed by WTO members

The WTO's fundamental objective is to promote world economic development in accordance with the rules of the market economy. This intent is embodied in three basic principles of the GATT:

(1) Most-favored-nation treatment (Article I)

(2) National treatment (Article III)

(3) General abolition of quantitative restrictions (Article XI)

For Viet Nam as it focuses on industrial development, a fourth principle is equally important:

(4) Tariffs as a means of legitimately protecting domestic industries (Article II and Article XXVIII-2).

The intent of the WTO is that, under the free trade system, member countries will (1) accord most-favored-nation treatment to all other member countries; (2) treat foreign-made goods and domestic goods equally; and (3) abolish all trade barriers, including tariff barriers and non-tariff barriers such as quantitative restrictions. In doing so, they will guarantee free and non-discriminatory access to markets and resources, leading to the expansion of world trade and the development of the world economy. The WTO permits member countries to consolidate all protective measures in the form of customs tariffs during the transition process, thus eliminating all non-tariff measures. This reflects the position of tariffs as the sole form of protective measures permitted under WTO agreements. However, in accordance with the spirit of trade liberalization, the WTO calls on each member country to lower its tariff levels in successive stages. For this purpose, member countries are required first to set tariff ceilings (bound tariffs), and then to introduce progressively lower rates (see Section II-5 for details of the principles of WTO agreements).

The WTO gives special consideration to the needs of developing countries[3] and to least-developed countries[4] in particular. Transition period measures and exceptions are provided to ensure observance of the agreements (see Section II-4 for details). How far these could be applied in the case of Viet Nam would be decided during the negotiations on admission. At present, however, Viet Nam would appear to have few reasons for optimism.

For one thing, the example of former Soviet economies that achieved official WTO membership suggests that Viet Nam would face a daunting negotiation process. Two former Soviet republics, Estonia and Georgia, were recently accepted into the organization under extremely strict conditions: bound tariffs[5] on virtually all products (e.g., bound tariff rates of around 10 percent on major industrial goods); commitment to radically liberalize trade in services; full adherence to the TRIMs agreement; immediate obligation (i.e., no grace

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[3] There being no objective criteria with which to define a "developing country," the WTO depends on the declarations submitted by the countries themselves. The GATT's Trade Development Committee is authorized to make such judgments, but there does not appear to be any incidence of it doing so.
Source: Chapter 6, "Developing Countries and the GATT," from "The Expanded GATT and the Uruguay Round"; Takase Tamotsu, ed. [Toyo Keizai Shinpo-sha, 1995]

[4] These include Bangladesh, Myanmar, Afghanistan, and many African countries.

period) concerning TRIPs, TBT and tariff evaluations; and abolishment, upon admission, of all export subsidies on agricultural products.

China presents a second example. Here, bilateral agreements have centered thus far on the large-scale liberalization of commodity and service trade.

Commodities

① Tariffs: China committed itself to large-scale tariff reductions, promising to lower tariffs on mined and manufactured goods to an average of 9.4 percent by 2005, and those on all agricultural goods to 17 percent by January 2004 (negotiations with the U.S.). At the WP, China also announced its intention to participate in the Information Technology Agreement, in the zero-zero sector (apparel, iron and steel, paper products, construction machinery, agricultural machinery, medical equipment, furniture, toys and other goods), and in Chemical Harmonization (tariff reductions on chemicals and chemical products).[6]

② Import restrictions: China promised to abolish all quantitative restrictions on imports, including import quotas, import approvals, and open bidding, within five years of accession. Quantitative restrictions on automobile imports, for example, would be abolished in 2005; import quotas until that year would be increased by from the present level of USD6 billion by fifteen percent per year (negotiations with the U.S.).

③ Standards and certifications: China agreed to introduce national treatment by unifying the legal standards applied to domestic and imported goods, and to guarantee the transparency of all procedures (negotiations with Japan).

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[5] This means that virtually all imported goods are subject to bound tariff rates. The percentage of imports whose tariff rates are bound is calculated as follows: sum total of the value of import items that have bound tariff rates ÷ value of all imports × 100. Among WTO member countries the average resultant figure is 99 percent for industrialized countries and 73 percent for developing countries; among economies in transition to the market economy, the average is 98 percent.

[6] Under "Chemical Harmonization," signatories agree to lower their customs tariffs on chemicals and chemical products (in principle, those in Category HS28-39) and to establish a final rate of from zero to 6.5 percent and a time limit for the reductions to be effected. Japan, the United States, and the European Community are among the countries and regions that have announced their participation in the Harmonization, which was one of the agreements reached through the Uruguay Round of tariff negotiations. Other agreements have been reached for the purpose of lowering tariffs in specified fields. The Information Technology Agreement (ITA) was reached in December 1996 to abolish tariffs in the information technology sector. As of December 1999 there were fifty-one participating countries and regions.

Services

① Distribution:[7] China committed itself to a progressive easing of restrictions on foreign-capitalized companies' participation in the distribution industry once it was admitted to the WTO. China promised that with certain exceptions,[8] it would abolish all restrictions on business location, numbers of companies and their stores, and foreign capital ratios (negotiations with Japan). China promised that it would abolish, in stages, virtually all restrictions on foreign participation in distribution services within three years after admission, and restrictions on distribution-related services[9] within three to four years (negotiations with the U.S.).

② Telecommunications:[10] China agreed to permit up to 49 percent foreign capital in all telecommunications services, and up to 50 percent foreign capital in value-added telecommunications services and pager services within two years after joining the WTO. Regional restrictions would also be lifted after admission: within two years for value-added telecommunications services and pager services; within five years for cell phone services; and within six years for domestic priority services. In three cities - Beijing, Shanghai, and Guangzhou - restrictions would be lifted on all services upon China's admission to the organization (negotiations with the U.S.).

③ Financial services:

(a) Insurance:[11] China agreed to permit up to 50 percent foreign capital participation in life insurance businesses upon joining the WTO, and up to 51 percent in other types of insurance business, such as damage insurance, also upon accession. Within two years after accession it would also allow the establishment of wholly self-capitalized subsidiaries. Regional restrictions would be abolished in stages within three years. Within five years, foreign insurers would be permitted to progressively expand their range of services to include group insurance, health insurance and pension insurance (negotiations with the U.S.).

(b) Banking:[12] China promised it would withdraw regional restrictions on bank establishment five years after joining the WTO, and would lift the ban on yuan transactions between foreign banks and Chinese corporations two years after joining. After five years, foreign banks would be permitted to engage in yuan transactions with individual Chinese nationals (negotiations with the U.S.).

(c) Securities: Joint ventures with foreign capital of 49 percent or less would be permitted to transact in

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[7] Foreign capital is tightly restricted in China's distribution sector. The central government currently permits only minimal foreign participation, on an experimental basis and only in retail business in certain large cities and special economic zones.

[8] It would still not be permissible for foreign capital to account for the majority in large department stores or chain stores.

[9] Rentals, freight forwarding, warehousing, inspection, etc.

[10] China tightly restricts sales of telecommunications services and prohibits foreign investment in the field.

[11] Foreign insurers are only permitted to operate in Shanghai and Guangzhou.

[12] China imposes strict regional restrictions on the establishment of foreign banks. Foreign banks are prohibited from engaging in yuan transactions with Chinese nationals.

domestic and foreign-denominated securities such as corporate debentures or stocks. Foreign-capitalized joint ventures would also be able to manage assets under the same conditions as Chinese companies (negotiations with the U.S.).

④ Construction (negotiations with Japan):

(a) China promised that upon acceding to the WTO, it would permit the establishment of 100-percent foreign-capitalized real estate affiliates (excluding certain high-level projects).

(b) Construction: 100-percent foreign-capitalized construction affiliates would be permitted within three years after China's admission to the WTO.

(c) Architectural offices: 100-percent foreign-capitalized architectural affiliates would be permitted within five years after admission.

⑤ Shipping: Upon acceding to the WTO China would permit freight forwarding by joint ventures with foreign capital of 49 percent or less. After one year, permission would be extended to firms with a majority of foreign capital, and within four years to 100 percent foreign-capitalized affiliates (negotiations with Japan).

Viet Nam would be bound by similarly strict requirements upon acceding to the WTO. In addition, the bilateral agreement concluded between Viet Nam and the United States on July 13, 2000 provides for the sweeping liberalization of trade in both goods and services. In light of the WTO's most-favored-nation principle, other member countries will be demanding similar commitments to those that Viet Nam made to the United States. Examples of these are given below.

Trade in goods

- Within three years, progressive reduction of import tariffs on U.S. goods from an average of 40 percent to an average of 3 percent (not applicable to prohibited imports).
- Abolition of import quotas on U.S. agricultural and industrial goods within two to seven years (within ten years for sugar imports).
- Guarantee of national treatment for all imported goods: no discrimination, either direct or indirect, in taxation of imports and domestic goods[13] (for certain products, progressive equalization over three years).
- Three years after the effectuation of the agreement, permission for U.S. companies operating manufacturing businesses in Viet Nam to engage in international trade.
- Permission for U.S. companies or individuals to establish joint ventures (49 percent foreign capital)

[13] This means that the government may not discriminate between imported and comparable domestic goods in the measures it applies. (Customs duties, as border measures, are not affected by this rule.) The purpose of this policy is to prohibit a government from taking discriminatory measures against imports, and to ensure that it does not erect hidden trade barriers by, for example, imposing non-tariff measures that offset the effects of tariff reductions.

with Vietnamese companies (foreign capital ratio can be increased to 51 percent three years after effectuation of the agreement). Seven years after effectuation, permission for U.S. firms to set up wholly owned subsidiaries.

Trade in services

- Viet Nam's agreement to the major provisions of the WTO's General Agreement on Trade in Services (GATS) has dramatically increased the opportunities for U.S. firms to enter Viet Nam's service sector.
- Financial services (banking): Viet Nam will allow the establishment of banks through mergers, in which U.S. capital accounts for thirty to forty-nine percent of the total. Nine years after effectuation of the agreement, U.S. banks will be permitted to open wholly owned subsidiaries, and will be able to hold the same percentage of capital in Vietnamese banks as Vietnamese investors. Eight to nine years after effectuation, U.S. banks will be permitted to accept deposits in Vietnamese currency. Three years after effectuation, 100 percent U.S.-capitalized financial institutions, including banks, will be allowed to offer financing using the land rights of foreign affiliates as security.
- Telecommunications: Viet Nam agreed to make its telecommunications framework conducive to competition: Among other things, it will ensure mutual accessibility as prescribed in the WTO's "Reference Paper on Regulatory Frameworks for Basic Telecommunications Services," provide universal service, and make licensing standards available to the public. In the field of value-added telecommunications, it agreed to permit the establishment of joint-venture companies starting two years after effectuation of the agreement (maximum foreign-capital ratio 49 percent for the first six years; unrestricted thereafter). Seven years after effectuation, foreign firms will be permitted to set up wholly owned affiliates.

Other fields

- Viet Nam agreed to conform to the WTO agreement on protection of intellectual property rights within eighteen months.
- Viet Nam agreed to progressively abolish trade-related investment restrictions that are inconsistent with WTO agreements, such as local content requirements and export requirements. Double taxation will also be abolished, within two to four years after the agreement takes effect.

Thus, all of the available material—material covering the experience of economies in transition to the market economy, such as China and the former Soviet republics, or the substance of the bilateral negotiations between Viet Nam and the United States—suggests that chances are quite slim for Viet Nam to be approved for the WTO's special provisions for least-developed countries.

4. Summary of WTO Agreements (See section II for details)

The Agreement Establishing the World Trade Organization, and each agreement included in Appendices 1 through 3, are applied in all member countries on an en bloc acceptance basis.[14] Along with the many trade and economic benefits that come with accession, all countries hoping to join the WTO, including Viet Nam, take on the responsibility to bring their internal institutions into conformity with WTO agreements. While this is a natural obligation in view of the benefits obtained, it is vital to understand exactly what this means. The following is a summary of Viet Nam's current situation, the issues it must address, and, most importantly, the impact on its industrial policy, in four important areas.

① Three basic principles common to all WTO agreements (most-favored-nation treatment, national treatment, and abolition of quantitative restrictions)

② Agreements on merchandise trade, especially bound tariffs and the three exceptions (safeguards, subsidies and countervailing and anti-dumping measures)

③ Agreements on non-merchandise areas (agreements on services and intellectual property rights)

④ Agreements on transparency in trade procedures (TRIMs, TBT, etc.)

5. Three basic principles common to all WTO Agreements (Most-favored-nation treatment, national treatment, and abolition of quantitative restrictions)

Treat foreign and domestic products equally. Eliminate all quantitative restrictions. Accord most-favored-nation treatment to all nations. What significance will these principles have for the industrial policy of Viet Nam? At present, for example, Viet Nam imposes quantitative import restrictions on the items listed below. Some of these, such as automobiles, iron and steel, cement and petroleum, are key industries in the nation's economy. But with accession to the WTO Viet Nam would almost certainly have to abandon the quantitative restriction means of protecting its industries and adopt standardized tariff measures. Initially this would mean making tariffs high enough to serve as exact substitutes for the quantitative restrictions currently in place. Later, the rates would be lowered in stages. Until Viet Nam can launch domestic industries and develop them to the point where they are price-competitive (at least, until their goods can compete with imported counterparts on the domestic market), it will have to protect its industries by keeping tariffs as high as possible. To do this, it will first have to use the highest bound tariffs (tariff ceilings) for which it can obtain approval. How high these will be will basically depend on what transpires at the negotiations. Thus, Viet Nam must spare no effort to promote an understanding of its national policies—its industrial policy in particular—among its partners in

[14] The agreements included in Annex 4 apply only to the parties to each agreement.

the membership negotiations.

Items subject to quantitative import restrictions by Viet Nam (partial list)

- Items prohibited for the purpose of environmental preservation, health maintenance, or transportation safety: Armaments, narcotics and other dangerous goods; tobacco products; used clothing; used electric appliances; used auto parts; automobiles with right-hand steering; used machinery
- Other items: Sugar, tiles, cement, plate glass, newsprint and other printing paper, iron and steel, vegetable oil, IKD and other types of parts for automobile assembly, automobiles seating twelve or fewer passengers
- Items subject to import quotas: Petroleum

Once Viet Nam abolishes its quantitative restrictions, it is far from certain that universal tariff treatment will give its industries adequate protection. For one thing, the level of bound tariffs used by current WTO members is extremely low,[15] suggesting that Viet Nam could hardly hope for much higher levels. A second problem would concern Viet Nam in the future, if not at present: there are a number of industries, such as automobiles and petrochemicals, to which the government will need to give sufficient protection for their start-up and development through tariffs or other methods but for which it currently has no legal and effective means of protecting.

Under these extremely confining conditions, what can Viet Nam do to nurture its emerging industries and still remain within the WTO framework? One possibility would be to get WTO to apply GATT Article XVIII: C (Exceptional Measures on Accession for Countries in the Early Stages of Development). The WTO permits these provisions to be invoked when it regards government assistance as necessary for a nation to promote the establishment of its emerging industries and, in turn, improve its general standard of living. Suppose approval is granted. In that case, with certain limitations, Viet Nam would be able to take measures that are contrary to all GATT rules except for those in Article I (most-favored-nation treatment), Article II (bound tariffs) and Article XIII (non-discriminatory application of quantitative restrictions). Viet Nam would thus be permitted - for a limited time - to take measures, such as quantitative import restrictions, that are inconsistent with the principle of national treatment. Malaysia did this recently, invoking GATT Article XVIII: C for the purpose of protecting its domestic petrochemicals industry through restrictions on imports of polypropylene and polyethylene.

Viet Nam would of course be obliged to consult with other member countries, especially those would be liable to suffer injury as a result of the action, explaining that government policy left it no other course but to

[15] As a result of the Uruguay Round of negotiations on tariff reductions held from 1986 through 1994, the listed countries had average tariff rates as follows. U.S.A.: 3.5 percent, Japan: 1.5 percent, EU: 3.6 percent, Korea: 8.3 percent, Thailand: 28.0 percent, Indonesia: 36.9 percent, Malaysia: 9.1 percent, Philippines: 24.6 percent ("Report on the Consistency of Trade Policies by Major Trading Partners," MITI, 2000).

protect certain of its domestic industries. Such a step would be especially necessary in the case of the automobile industry, for example. A country with a population as large as Viet Nam's, and with its balance-of-payments situation, must not fill future demand for automobiles with imports alone. Therefore, the fostering of domestic automakers must be a vital part of national policy. Viet Nam's neighbors, on the other hand, have had upwards of thirty years to follow through on the same policy, nurturing their auto industries in stages by, first, banning imports, then imposing national production regulations, introducing deregulation, and, finally, liberalizing the sector. By contrast, this will be virtually the first time that Vietnamese industries will be forced to compete with other nations under the free trade system. One thing is absolutely clear: If Viet Nam were to attempt full-scale liberalization under the conditions that exist today, domestic producers that are currently scraping along would soon be swept from the market.

6. Tariff bindings and the three exceptions (Agreements involving trade of goods)

Among the WTO rules that mention tariffs as a legal means of protecting domestic industry, member countries are trying, through negotiations, to lower the tariffs that are the most typical representations of trade barriers. While prohibiting quantitative restrictions in principle, the WTO allows its members to impose customs tariffs for the time being. Through negotiations, member countries commit themselves to a maximum tariff rate for each item (in principle, for each customs classification),[16] then strive to progressively lower the maximum rate (the bound tariff rate) and the effective tariff rate (the rate actually applied),[17] resulting in a reduction of tariff barriers. Should a country raise a tariff to a level that is higher than the bound rate, it must go through the procedures specified in GATT Article XXVIII[18] to raise the bound tariff rate itself. A country that raises a tariff to a level exceeding the bound rate without following this procedure is regarded as violating GATT Article II. Certain practices, while not strictly unfair trade measures that violate WTO rules, do contravene the promotion of free trade, which is the spirit of the WTO. These include unduly maintaining a high tariff within the bound limits, or raising the tariff on an item with a low bound rate or on an unbound item. Such

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[16] Customs classification: "The Harmonized System of Product Names and Classifications (HS)," set down in 1998 by the World Customs Organization (WCO), is the standard used by over half of the world's nations to classify imports for tariff purposes. To ensure that the HS is applied in a uniform manner, HS Article 3-1 provides that contracting parties may not make any change in the scope of sections, chapters, headings, or subheadings of the Harmonized System. HS classifications are subject to regular review, and in cases where an item's classification has changed so as to raise the bound tariff rate, negotiations must follow as provided in GATT Article XXVIII.

[17] In industrialized countries, bound tariff rates and effective tariff rates are generally the same. In developing countries it is common for bound rates to be set at higher levels than effective rates.

[18] Under GATT Article XXVIII, a country wishing to raise or withdraw a bound tariff rate is obliged to negotiate with and obtain the agreement of member countries with which it has directly negotiated, and of major supplier countries as well. It must also consult with countries that are major suppliers of the product that will effectively benefit from the change in bindings.

practices may also cause real damage to world trade. The WTO therefore calls upon each member nation to correct these measures of their own volition. This is done by lowering tariffs across the board and by increasing the bound commitment amount of trade (sum total of the value of bound import items ÷ value of all imports × 100) - in other words, by reducing the number of items without bound rates.

Viet Nam is in the process of building an orderly tariff system, and plans call for it to conform to the 1996 HS before the end of 2000. The current system has a number of problems concerning effective tariff rates; these are listed below.

- Major import items, such as automobiles, home electric appliances, cement, plastics and rubber, paper goods, petroleum, iron and steel, and alcoholic beverages, are taxed at high levels. Rates for finished products are particularly high.
- Rates are revised frequently and sometimes are raised. (In some cases, revised rates are even applied retroactively.)
- Frequent changes are made in the methods used to apply preferential tariffs.
- Imports are subject to various non-tariff fees.

From the perspective of local industry furtherance, there will inevitably be some commodities for which high-level duties must be maintained, but sudden hikes in tariff levels very much go against the global trend of reducing tariffs. Even if the revised tariff level is within the limits of bound rates, any sudden rise in duties is not going to be welcomed by the international community. Frequent revision of preferential tariffs should be avoided on the grounds of disturbing the investment forecasts of foreign companies, and potentially undermining the merits of local production. It should also be kept in mind that high tariffs on parts could stunt the development of international competitiveness in the assembled-parts industry.

A revised Export Law came into effect from January 1999, under the terms of which, tariffs are classified into three types: special preferential rates (for imports based on the Commonly Executed Preferential Tariffs [CEPT] scheme for the ASEAN Free Trade Area [AFTA]), preferential rates and standard rates. Preferential rates apply only to imports from countries which have been bestowed with most-favored-nation (MFN) status through bilateral agreement; countries subject to standard rates face an inflated tariff level, fifty percent higher than the MFN rate. For WTO member countries not subject to such special treatment, this breaches the WTO most-favored-nation doctrine (GATT Article I), and potentially provides special access to the Vietnamese market for a select few countries. Such conditions should not be allowed to continue over the long term, and a general speed-up in negotiations for WTO membership is called for.

Viet Nam, facing criticism for its non-tariff trade barriers and service charges, is currently preparing to make an offer on tariffs and needs be granted as long a transition period as possible due to its still-developing economy. Meanwhile, the international community is putting pressure on Viet Nam to toe the line in working toward making further tariff reductions on key import items, and normalizing trade conditions with other

member countries. As a result, preferential tariffs of a magnitude tenable with local industry protection are unlikely.

As outlined above, the application of bound tariffs for all WTO member countries is a key component of the promotion of free trade under the WTO system. This does not apply, however, for the following three forms of trade provision:

1. Anti-dumping (AD)
2. Countervailing duties (CVD)
3. Safeguards (emergency import restrictions)

That is, allowance is made for the legal application of such reactionary provisions as anti-dumping duties (in cases [1] and [2]) or import restrictions (in case [3]) in the following cases: [1] dumping on the part of a particular country causes local competing industries to suffer; [2] commodities benefiting from subsidies (export subsidies, local content subsidies, etc.) in a particular country, cause damage to the local industry in importing countries; and [3] emergency provisions are required to protect local industry from the debilitating effects of a sharp increase in imports. (See Section II-5-2 "Tariff concessions and the three principles" for further details.)

Of late, the application of such legitimate trade provisions has been extensive, including cases where they can be perceived as essentially comprising import restrictions. In the steel sector in particular, AD measures have been called upon with great vigor. Note that the very nature of AD provisions means that their effects begin to be felt even before they are initiated, from the point when investigations into anti-dumping allegations commence. That is, the attractiveness of export markets is dulled simply by there being the possibility of dumping tariffs being applied in the future, and companies named in dumping allegations face huge outlays in manpower, time and money once investigations have begun. Further, unlike safeguards—an alternative form of local industry protection—AD provisions lack stringent regulations (compensation payouts, the acceptance of reciprocal provisions on the part of affected countries, etc.), and are a readily accessible form of discriminatory trade policy (i.e., protectionism or import restriction). For example, there has been a spate of instances of AD investigations commencing despite investigation preconditions[19] not being met, or AD provisions being maintained despite conditions on their application being removed.

Similar to AD provisions, CVD-based measures can be applied only on the strength of thorough investigation on the part of the local investigative authority in the importing country. In most countries, CVD-based measures and AD provisions are governed by the same law, undergo the same procedure leading up to initiation, and are controlled by the same investigative authority. While there are strong parallels between the two forms of trade provision, they differ in that CVD-based measures are targeted at governments, whereas AD provisions are targeted at companies. As the WTO is an amalgamation of countries and the governments of those countries,

[19] According to Item 1 of Article 5 of the AD agreement, "investigations... will be initiated based on request in writing from or on behalf of the local industry affected by dumping."

CVD and AD agreements cannot be used directly to clamp down on the actions of companies. In this sense, the distinguishing characteristics of the two forms of trade provision are that with CVD-based measures, the government is the organ that both offers subsidies and instigates countervailing measures to subsidies of other governments, but with AD provisions, the government is able only to react to dumping through regulation.

Looking at the case of the Vietnamese steel industry, a precondition on WTO membership is the complete abolishment of current quantity restrictions, and concentration of protective efforts on tariffs. When one looks closely at trends among member countries, however, it becomes apparent that there has been an alarming increase in the number of countries abolishing non-tariff trade barriers on steel products on the one hand, but at the same time using AD provisions and safeguards to protect the local steel industry through legal means. Viet Nam should emulate this lead in establishing an AD Law and AD claim system, and possibly even prepare itself to apply AD provisions at internationally acceptable levels.

7. Agreements involving non-merchandise tade (Agreements on services and intellectual property rights)

7.1. General Agreement on Trade in Services (GATS)

As trade in services (financial services, transport, communications, construction, distribution, etc.) increased steadily, GATS became important in promoting trade liberalization so as to prevent domestic regulations governing their supply and consumption from becoming barriers to trade in services. There are three types of obligation settled under GATS. First, there are obligations applied to all sectors regardless of whether a commitment has been made or not, such as (a) most-favored-nation treatment and (b) assurance of transparency of relevant laws and regulations. Second, there are obligations applied to sectors where commitment has been made, such as (a) objective application of domestic regulations and (b) no restriction on payments and transfers. Third and last, there are obligations applied under individual specific commitments, such as (a) improved market access[20] and (b) national treatment granted to any service supplier of any other member. (See Section II-3 "Agreements involving non-merchandise trade" for further details.)

In practice, each WTO member has to hand in schedules of specific commitments concerning limitations on market access and national treatment as well as a list of MFN. As well, in the aims of achieving progressive liberalization of trade in services, WTO members are obliged to enter into successive rounds of negotiations within five years from the date of entry into force of the WTO Agreement (i.e., until Jan. 1, 2000). Then and

[20] Under the GATS, the following six measures are explicitly forbidden (1) limitations on the numbers of service suppliers, (2) limitations on the value of service transactions and assets, (3) limitations on total output, (4) limitations on the total number of natural persons that may be employed, (5) limitations on the types of legal entity that provide services, and (6) limitations on the participation of foreign capitals.

thereafter, members are expected to continue the negotiation periodically in order to further the objectives of GATS, in which the national policy objectives and level of development of individual members are fully considered.

In Viet Nam, a number of problems concerning trade in services are pointed out; these are listed below.

- Discriminatory treatment in trading rights: Foreign companies are allowed as manufacturers, but not as traders (a foreign company can establish a representative office, but it is forbidden to engage in trade transactions). Therefore, foreign companies are not permitted even to resell the products that are imported in accordance with their production plans (although it is possible for them to export products other than what they have produced themselves). A similar problem is also pointed out concerning foreign investments in Viet Nam's distribution sector.
- Two-tiered price system: There are disparities between the prices charged to foreigners and those charged to Vietnamese nationals, which can be seen in the prices for public utilities (including electricity and water), stevedoring, airline tickets, hotel charges, housing, etc. The two-tiered-price systems for water and telephone services have been abolished and telephone charges have been reduced since July 1999. However, there is still around a 40% difference in electricity charges. Since such discriminatory treatment works as a disincentive to foreign investors, elimination of the system is recommended.
- Conditions concerning foreign company employment of Vietnamese nationals: As to this matter, it is said that some improvements[21] have been made since July 1999 when the Prime Minister's Order No. 53 took effect. Despite the changes, the minimum wage for foreign companies is still three times the level of Vietnamese companies and all these improvements do not apply to representative offices.

In Viet Nam, foreign companies are not allowed to engage in imports in such industries as chemical fertilizer and petroleum refinery. As to the fertilizer imports, a new system was introduced in early 2000, in which import quotas, in principle, are abolished and it became possible to import as much as needed. However, import license has not been granted to foreign trading companies; it has been limited to those government appointed companies under the old system such as Vigecam, the public import and export corporation under the direct control of the central government; VinaFood; VinaCafe, the public coffee corporation; and the province-based public trade corporations. As to the petroleum refinery industry, Viet Nam covers almost all its domestic needs for petroleum products by imports. Currently, four state-owned companies[22] have almost

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[21] (1) the payment of wages to Vietnamese workers in local currency became possible, (2) reduction of minimum wages, (3) direct employment of Vietnamese nationals by foreign companies became possible in cases when the "Centre for Employment Services" cannot meet the foreign company's needs within 30 days.

[22] The four companies are Petrolimex (in charge of the bulk of petroleum-based product imports, and with the greatest share of imports and sales), Viet Nam Saigon Petro (under the direct control of the People's Council of Ho Chi Min City, and holding a 50% market share in southern Viet Nam), Petrovietnam Trading & Distribution Co. (recently established as a subsidiary of Petrovietnam), and PETEC.

exclusive control over the import and sale of fuel oil (gasoline, kerosene, and diesel) and the foreign participation in the distribution sector is allowed for only LPG, asphalt, and lubricants.

It is inevitable that in either industrial area mentioned above, trade rights will be granted to foreign investors in the years to come as the U.S.-Viet Nam Bilateral Trade Agreement comes into force. Since Viet Nam has basically agreed upon the matters specified in GATS under the WTO, trade in services will certainly be liberalized, which leaves a hard reality that some domestic service suppliers will go out of business in the short run. However, in the long run, benefits will most likely outdo the losses. Since most services such as financial services, transport and shipping, communications, distribution, construction and energy are inputs to other industries, it is expected that increased efficiency and rationalization efforts in a certain service sector will benefit not only that service sector but will also have a great positive spillover effect in the production efficiency of other service and manufacturing sectors.

7.2. Protection systems for intellectual property

There are two aspects when discussing the protection of intellectual property: in developing countries there often is insufficient protection; and in developed countries there often is excessive protection that discriminates against foreign nations. In either case, the trade-distorting effect of these problems has become a major concern as the volume of trade in goods and services involving intellectual property has increased greatly in recent years. Accordingly, the WTO, in order to bring greater order to international trade, requests its member countries to adjust domestic standards in conformance to the international standard established in the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement. (See Section II-5-3-2 "Protection systems for intellectual property" for further details.)

The problem of replica Honda motorcycles being illegally imported into Viet Nam is known. When products that infringe upon intellectual rights can be freely manufactured and distributed in the domestic market as a result of insufficient protection of property rights, technological transfers that are necessary for developing the local industry —in this case motorcycle industry—can be hindered since it depresses the motivation of foreign investors. Insufficient protection of property rights may also reduce the incentive of domestic companies to absorb new technologies, thereby impeding technological development of the country.

Because intellectual property rights allow a certain amount of monopolistic use of new technology and knowledge (i.e., they limit third party use), they restrict competition and reduce the social benefits to consumers by limiting the industrial application of the technology and knowledge. Therefore, the system of intellectual property rights should be instituted carefully so as not to prevent fair and free competition.

In the case of Viet Nam, the following problems are pointed out concerning intellectual property rights:

① National treatment is not ensured concerning fees and service charges for the establishment, the

maintenance of industrial property rights and the registration of copyrights.

② There are no specific provisions for the protection of copyrights, related rights of computer programs and performer rights.

③ The range of protection for trademarks is narrow.

④ There are no specific enforcement provisions to protect intellectual property rights against infringement. (However, a certain improvement was made in March 1999 when the penalties that authorities could assess were made more severe.)

⑤ Pirated products, such as computer software and videos, are rampant in the domestic markets, and to make the matter worse, understanding of such rights by the Vietnamese people is not common yet.

⑥ Regulations concerning international licensing contracts between foreign and domestic companies (under Chapter 3 of The Civil Code Part IV) contravene part of the provisions of the TRIPs Agreement; specific examples are as follows:

(i) The validity of technological transfer contract is limited to seven years (according to Article 810 of the Vietnamese Civil Code). In certain special cases, it can be extended to ten years. This violates the provisions of the TRIPs Agreement (Article 28) that protect the rights of patent holders in licensing agreements and contravenes the 20-year patent protection period (Article 33).

(ii) The requirement to assure that technology meets certain quality levels (according to Vietnamese Civil Code Article 815).

(iii) The obligation of the licensee to prove that the technology does not infringe on a third party's rights (according to Vietnamese Civil Code Article 817).

Items (ii) and (iii) are not deemed to contravene the TRIPs Agreement, but they certainly impose extremely disadvantageous conditions on the licensee.

Under the TRIPs Agreement, transitional arrangements are provided, in which developing countries and least-developed countries are exempted from the obligation of applying the Agreement, except for national treatment and most-favored-nation treatment, for a certain number of years. Developing countries and economies in transition to the market economy were given five years (until January 2000), and least-developed countries were given eleven years (until January 2006) (Articles 65 and 66). However, as mentioned in Chapter 3, most of the transitional arrangements available for developing countries under the WTO agreements seem unlikely to be approved in the case of Viet Nam considering the experience of other economies in transition to the market economy, such as China and the former Soviet republics, and the substance of the bilateral negotiations between Viet Nam and the U.S.

The WTO has appealed to developing countries to acknowledge the importance of the implementation of the Agreement and to change their national laws and regulations accordingly. And for this purpose, fourteen developed countries and seven international organizations including the World Customs Organization (WCO)

have circulated technical and financial cooperation information to developing countries. In addition, the WTO and the World Intellectual Property Organization (WIPO) are jointly providing technical assistance for the implementation of the Agreement by the year 2000. Due to the expiration of the transition period for developing countries, a review of their laws and ordinances is scheduled to take place in 2000 and 2001. As for the new members to come, the legislation review will be conducted in order after accession.

As for Viet Nam, establishing the complete system of protection of intellectual property rights will be of great benefit to the improvement of its investment environments; therefore, pursuit of international technological assistance is highly recommended.

7.3. Agreements regarding transparency in trade procedures (TRIMs, TBT, etc.)

There are various agreements that regulate technical aspects of trade-related administrative procedures of WTO member countries. Examples of such agreements are listed below:

① Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)
② Agreement on Import licensing
③ Agreement on Technical Barriers to Trade(TBT)
④ Customs Valuation Methods Agreement
⑤ Agreement on Preshipment Inspection(PSI)
⑥ Agreement on Rules of Origin
⑦ Trade-Related Investment Measures(TRIMs)

These agreements consist of rules that concern purely technical aspects of the administrative procedures of each country, and therefore should be neutral to trade measures as long as they are implemented properly. However, different standards in each country and arbitrary formulation and administration of rules in an attempt to achieve protectionist policy objectives, could restrict the scope of international trade. Therefore, it is especially important to create common international standards in these areas of trade-related administrative procedures. (See Section II-5-4 and beyond for further details.)

Among the agreements that regulate trade-related procedures listed above, TBT, Import Licensing, Customs Valuation Methods, and TRIMs are of special importance to Viet Nam. The problems concerning each trade procedure will be discussed below.

TBT Agreement

Since not many of the national standards that are used in Viet Nam are consistent with the international standards regulated in the TBT Agreements,[23] Viet Nam should make further efforts in bringing its national

standards up to international levels. For this purpose, the establishment of enquiry points and the expansion of international-standard testing institutions (19 of which exist in the country at present) become of great importance. It is not likely that Viet Nam will be granted a transition period for implementing the TBT Agreement; WTO members will most likely seek full implementation of the TBT Agreement. Therefore, it is essential for Viet Nam to seek technical assistance from the member countries in order to compensate for its lack of adequate technology, facilities, funding, and experiences necessary for the full implementation.

Agreement on Import Approval

According to the License Agreement, import-licensing procedures should be simple so as to assure transparency and predictability. Therefore, each member country is obliged to publish information that sufficiently clarifies how and why licenses are granted, and to notify the WTO when it introduces new import licensing procedures or changes existing procedures. In this respect, Viet Nam's import licensing system conflicts (as listed below) in terms of quantitative import restrictions. It is expected that Viet Nam will adjust its system to conform with the Licensing Agreement as early as possible.

- Many imported items are subject to import licensing.
- Since the details of rules administering the licensing procedure are unclear, so is its implementation.
- Cumbersome procedures delay the time for obtaining the license.
- Excessive documentation is required.

In addition, numerous restrictions against foreign companies in regards to import have to be changed in the licensing system. Specific problems concerning import restrictions on foreign manufacturers (especially in the automobile industry) are listed below:

① Since foreign manufacturers are permitted to import equipment and parts only for their production, there are difficulties in import licensing procedures: all foreign manufacturers have to submit, in advance, annual production plans for finished products, sales plans, and inventory plans in addition to a master list of all parts and equipment that will be imported. Since an immediate application for a new license is required when a part has to be changed during the year due to a changed specification, the company has to go through the cumbersome procedure a second time, which puts a great burden on the company.

② Foreign manufacturers in the area of main electrical machinery and consumer electronics can only import parts in the form of IKD[24] (indigenized knockdown[25]). In addition, they face difficulties in

[23] Among 4,252 national standards that are used in Viet Nam, only 640 standards conform to international standards such as ISO, and 406 standards conform to European Norm or other countrys' standards.

manufacturing new or high-tech products since import licenses for individual parts are not usually granted for foreign manufacturers. The IKD import system will be abolished by the end of 2000 due to the "decision on the preferential rate of import duties applicable to products and accessories in the engineering, electronic and electrical industries on the basis of ratios of localization" (announced December 25, 1998). However, not much substantial improvement will be made since the system simply switches over to a tariff system based on accomplished rates of local content requirement. Further improvement is recommended.

③ Foreign manufacturers are prohibited to import finished goods and are not allowed to import finished goods for the purpose of marketing. This has resulted in delays in the introduction and production of advanced, high-tech products for Viet Nam market.

Agreement on Customs Valuation

Under the WTO agreements, the system for the valuation of goods for customs purposes should be fair, neutral and uniform. And for the very purpose, the Agreement provides a set of valuation rules and forbids the use of arbitrary or fictitious customs values. For developing countries, under Article 20 of the Customs Valuation Agreement, the application of the Agreement can be postponed for a particular period of time if other member countries approve. About forty members have applied for this delay as of January 2000.

Problems regarding customs valuations in Viet Nam are listed below:

① Due to the ambiguity and lack of detail in the laws and regulations covering tariffs, interpretation of the applicable tariff rates and their application in practice varies among customs officials.

② Since import tariffs are revised suddenly and are effective retroactively, business planning is difficult for foreign companies.

③ Lack of uniformity in shipping documents and complicated procedures amount to many days for custom clearance. Therefore, the length of time necessary for customs clearance is not certain.

④ A tariff code for individual parts is not established. Imported parts are divided mainly into the following three categories: IKD (indigenized knockdown), SKD (semi knockdown), and CKD (complete knockdown). Since there is no uniform definition at customs offices about IKD, SKD, CKD, there are cases in which different officers have classified products differently.

⑤ Due to the abuse of the exceptional provisions of the most-favored-nation principles regarding frontier traffic with adjacent countries (GATT XXIV: 3), a large number of Thai motorcycle CKD parts are imported tariff-free from Laos. Since GATT Article XXIV: 3 states that "border trade" should be small

[24] IKD is defined as CKD that has met a certain level of local content requirement (twenty percent at present).

[25] IKD sometimes stands for incomplete knockdown.

in scale and limited to daily necessities of residents, appropriate tariff should be applied upon those products coming across the border in large volume for commercial purposes.

It is necessary for Viet Nam to enhance transparency and consistency in customs procedures in order to establish a stable business environment. And for that purpose, Viet Nam should implement regulations that provide a uniform procedure for customs clearance, and improve the inspection system in customs offices, including customs officer training. In this respect, Viet Nam's minimum-price system, which is applied to such imported goods as dairy products, beverages, electrical appliances and automobiles, should be abolished subject to provision concerning "minimum customs values" which are banned in the Customs Valuation Agreement. Currently, this system is used for the valuation of twenty-one imported items, and time will be needed to bring the system in to conformity with the WTO Agreement. However, it is unlikely that Viet Nam will be granted a sufficient transition period, because some members have already requested full implementation of the Agreement upon accession. An effort to reduce the numbers of items under the minimum-price system is urgently recommended.

TRIMs Agreement

Under the TRIMs Agreement, member countries are not allowed to apply trade-related investment measures that violate GATT Articles III (National Treatment) and XI (General elimination of quantitative restrictions), even for the purpose of protecting and fostering domestic industries and preventing the outflow of foreign exchange reserves. In particular, the Agreement explicitly forbids measures such as local content requirements, trade balancing requirements, foreign exchange restrictions, and export performance requirements (domestic sales requirements).

Measures specifically prohibited by the TRIMs Agreement should be notified to the WTO within ninety days after the entry into force of the WTO agreements and should be eliminated within a certain transition period.[26] Most of the TRIMs reported by member countries so far are local content requirements in the automotive and agricultural sectors. Since the initially granted transition period for the elimination of TRIMs in developing countries expired on January 1, 2000, such countries as the Philippines, Columbia, Mexico, Romania, Pakistan, Argentina, Malaysia and Chile have requested extensions, mostly in the automobile sector.

Problems regarding TRIMs in Viet Nam are pointed out as follows:

[26] Developed countries have a period of two years in which to abolish such measures; and in principle, developing countries and economies in transition to the market economy will have five years and least-developed countries will have seven years.

(1) Export requirement TRIMs: In new investment projects of twenty-four industrial products (including automobiles, motorcycles and home appliances), eighty percent of the total production output is required to be exported (according to a decision of the Minister of Investment and Planning on April 29, 1998). Although, export requirements of this kind are not explicitly prohibited by the TRIMs Agreement, they certainly go against the WTO's spirit of free trade. As well, they may contravene the principle of national treatment (GATS Article 17). Abolishing such requirements as soon as possible is highly recommended so as to improve Viet Nam's investment environment.

(2) Local content requirement TRIMs: Foreign manufacturers of electrical and electronic industries are required to obtain twenty percent of their material and parts from Vietnamese companies. This has not only limited the production range of foreign manufacturers and undermined their competitiveness in the international market, but it may also violate the explicit prohibition of local content requirement under the TRIMs Agreement.

The Vietnamese government decided to introduce a tariff system based on accomplished rates of local content requirement (at the end of 1998).[27] The system specifically sets preferential tax rates for products and accessories in the engineering, electronic and electrical industries on the basis of local content ratio. Although local content requirements do have a certain positive effect in increasing the local production levels, they can also result in substantial increases in the tariff rates for foreign companies. Under such a system, the international competitiveness of products will be hindered unless great care is taken to ensure that excessive import tariffs are refunded at the time of exports. Additionaly, offering incentives for preferential tariff based on the condition of local content rates most likely violates the TRIMs Agreement; therefore, careful consideration should be given before introducing such a system.

The Vietnamese government has been requesting a 5-year transition period to conform to the TRIMs Agreement. However, full conformance with the TRIMs Agreement will most likely be required upon accession, considering the fact that all member developing countries must implement measures which are consistent with the Agreement by 2000.

Exceptions for developing countries are included in the Exceptional Provisions of the TRIMs Agreement, according to which developing countries are permitted to retain TRIMs which constitute a violation of GATT Article III or XI. This is only allowed provided that the measures meet the conditions of GATT Article XVIII that allows specified derogation from GATT provisions, by virtue of the economic development needs of developing countries. However, when it comes to the actual enforcement of Article XVIII: C, one has to research further into details of past examples (including Malaysia's import permit system for petrochemical products mentioned above) and make sure that there is a certain chance of success in resorting to this strategy.

[27] The new system is already introduced in such industries as motorcycles.

The signing of the U.S.-Vietnamese Bilateral Trade Agreement will certainly accelerate the trade liberalization effort on the part of Viet Nam. At this very moment, it is crucial that the government act positively in conformance to the WTO rules and give utmost effort to talking with those countries that would be affected if Viet Nam was to protect and foster a strategic industry in the future. It is important that those countries understand in advance that if bold action is needed, the Vietnamese government might resort to protective measures for a specified period of time.

Due to the Principle of Reciprocity of AFTA, it is possible for a government to adopt product-by-product policies. Under the WTO, however, there are certain principles and rules that are fully obligatory upon accession; and for any violation of the WTO agreements, a country could become liable for a certain amount of compensation if the case is brought to the dispute settling body of the WTO. Furthermore, when the parties involved in the dispute disagree with the terms of compensation, retaliation in the form of import tariffs could be imposed on the products, or even on products other than the ones in dispute.

It is crucial for the Vietnamese government to understand fully the meaning of WTO accession, and it should not rush into hasty trade liberalization that could ruin the chances of industrialization when industry is at an infant stage.

Section II. Outline of the WTO

1. What is the World Trade Organization?

The World Trade Organization (WTO) is the international organization dealing with the rules of trade in goods, services and intellectual property between the WTO member nations (i.e., those countries that have signed the WTO agreements). The WTO member countries have each tried to liberalize international trade flow by utilizing the agreements (WTO Establishing Agreement and Annexes 1-4) negotiated and signed among the members as the legal ground-rules.

The most important functions of the WTO in achieving the agreements' overriding purpose of free trade are as follows:

- Providing a forum for trade negotiations
- Settling trade disputes between member nations
- Ensuring that trade rules of member nations be transparent by reviewing members' trade policies

Accordingly, the WTO General Council falls under the Ministerial Conference (the highest decision-making body in the WTO) and has three guises corresponding to the three most important functions mentioned above. Under the General Council, there are three more councils that handle different areads of trade (namely trade in goods, trade in services, and trade-related aspects of intellectual property) each of which has subsidiary bodies (committees and working parties) that correspond to each of the agreements in the concerned trade area (see Figure II-2).

The WTO membership has expanded to 135 nations as of February 2000. In addition, there are currently thirty countries and regions seeking accession to the WTO (see Table II-1). What benefits are these countries expecting the WTO to offer? The utmost benefits of the WTO trading system are found in the following three functions:

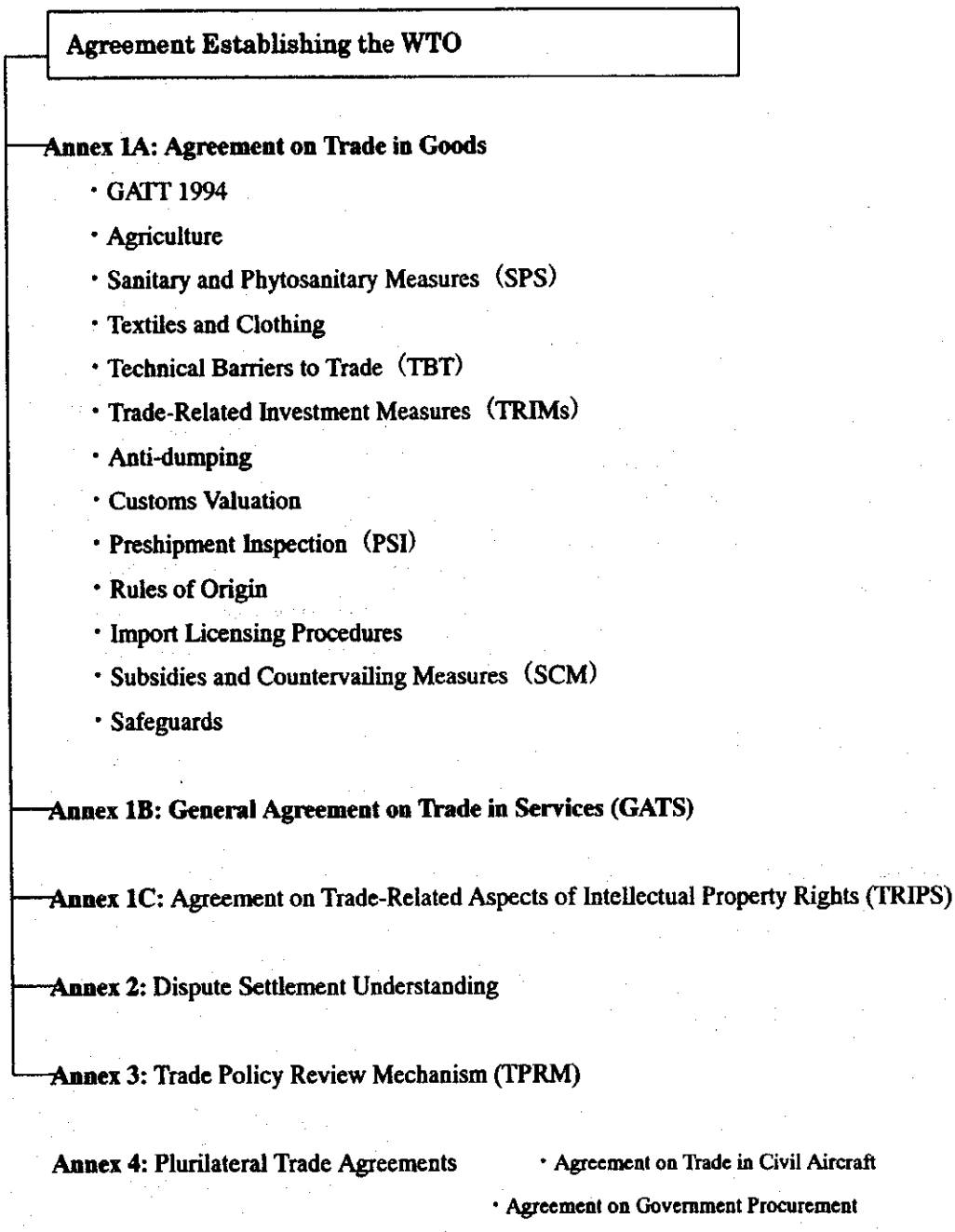
- It can handle trade disputes constructively in the sense that it helps resolve disputes over trade issues by providing common rules and standards as well as a negotiation forum.
- It ensures easier market access as well as helps trade flow smoothly under the multilateral trade system by imposing disciplines on member countries in complying with the common rules and improving the domestic trade and investment environment thereof.
- It stipulates economic growth through trade promotion.

Above are the benefits any country can enjoy by accession to the WTO. On the other hand, however, all member countries are obliged to abide by the rules under the WTO Establishment Agreement and its Annexes 1-3. The rules are enforced strictly in the sense that in case of violation, trade sanctions are imposed by other

member countries. Nevertheless, special arrangements for developing and least-developed countries are included in the Agreement, in which transitional arrangements and exception clauses are provided so as to help these countries comply with the agreements.

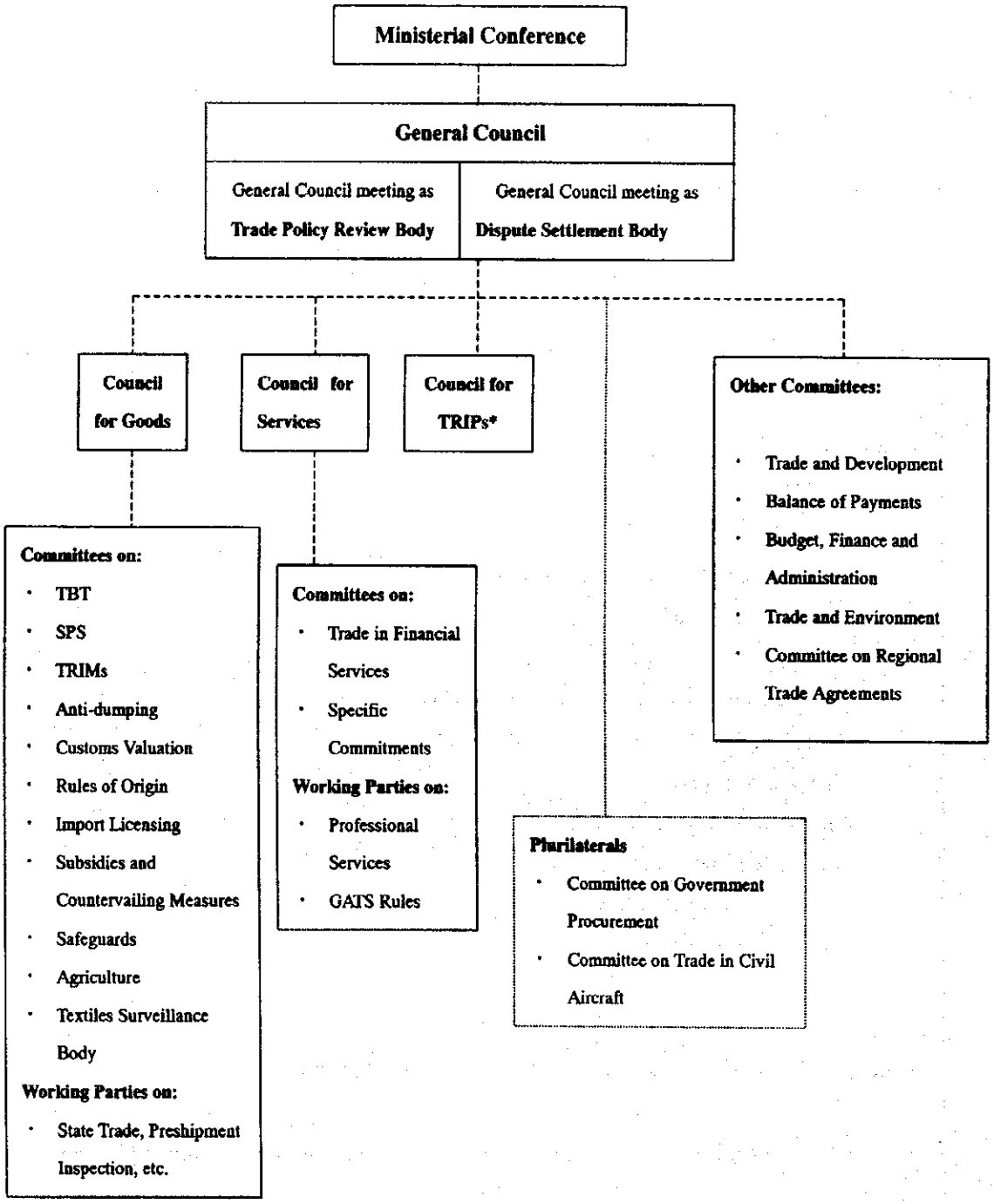
In the following chapters, we will explain what we ought to know in fully understanding the WTO system. In addition, we will pay special consideration in clarifying what membership in the organization means to developing and least-developed countries by commenting further on the outline of the WTO agreements.

Figure II-1.The WTO Agreements



Source: "Trading into the future" The World Trade Organization (WTO), 2nd edition, revised April 1999, Chapter 2 "The Agreements"

Figure II-2.WTO structure



Source: "Trading into the future" The World Trade Organization (WTO), 2nd edition, revised April 1999, Chapter 6 "The Organization"

Table II-1.Countries/Regions with accession to the WTO pending

Date of application	Country or Region
Prior to 1990	Algeria (1987), China (1986) , Nepal (1989), Taiwan(1990)
1992	Albania
1993	Armenia, Belarus, Croatia, Moldova, Russia, Saudi Arabia, Ukraine
1994	Cambodia, Lithuania, Macedonia, Sudan, Uzbekistan
1995	Viet Nam, Seychelles, Vanuatu, Tonga
1996	Kazakhstan, Oman
1997	Andorra, Azerbaijan
1998	Laos, Samoa
1999	Lebanon, Bosnia & Herzegovina, Bhutan

Note: The parentheses indicate the year of application for accession to GATT/WTO.

Source: Report on the Consistency of Trade Policies by Major Trading Partners," MITI, 2000

2. What we ought to know about the WTO

2.1 History of the WTO establishment

The General Agreement on Tariffs and Trade (GATT), the predecessor of the present WTO, was established in January 1948 immediately after the end of World War II under the initiative taken by two leading powers, the U.S. and the U.K. The basic principles of GATT were non-discrimination and free trade, which were held up reflecting the past experience of trade disputes turning into war. World leaders had learned the hard way from past experience in which the U.S. response to a recession, unilateral policy of raising tariff rates, injured the economies of other countries and caused them to retaliate. This evolved into the so-called trade wars among leading countries, worsened the Great Depression, and as a result, eventually had a part in the outbreak of World War II.

By ensuring non-discriminatory and free access to domestic markets and resources among countries, the GATT was designed to help avoid a repeat of world war. The GATT was originally signed as a provisional agreement in the process of establishing the International Trade Organization (ITO), and the GATT secretariat was to serve provisionally until the ITO went into effect. However, the ITO became effectively dead as a result of the opposition in the U.S. congress against ratification of the ITO Charter, and thereafter the GATT effectively remained in force as the only multilateral instrument governing international trade for almost half a century until the Agreement Establishing the World Trade Organization (WTO Agreement) came into effect January 1, 1995.

2.2 Basic purpose of the WTO

The basic purpose of the WTO is to expand the world economy by means of market mechanisms. "Raising standards of living, ensuring full employment and a large and steadily growing volume of real income and

effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources..." comprise the purpose of the WTO stated in the preamble of the WTO Agreement. In addition, the Agreement proposes the following ideas in order to ensure that market mechanisms function properly in international trade:

- Reduction of trade barriers
- Elimination of discriminatory treatment
- Environmental protection consistent with the objective of sustainable development
- Special concerns paid for developing countries, especially the least-developed countries

2.3 Basic principles of the WTO

The basic purposes of the WTO are embodied in the following principles:

- Most favored nation treatment (MFN) (GATT Article I)
- National treatment (GATT Article III)
- General elimination of quantitative restrictions (GATT Article XI)
- Legitimate protection of domestic industries through tariffs (GATT Articles II and XXVIII: 2)

For two main reasons, the WTO Agreement provides exceptions to the four rules mentioned above. Firstly, the exceptions are made in an action of positive realism, in which attempts are made to harmonize ideals with reality so as to sustain the multilateral trade system consistent with the rules. Secondly, exceptions are made because of the necessity to provide "handicaps" according to a country's stage of economic development.

2.4 WTO mechanisms

The WTO is an institution which was established in order to achieve the objectives of the WTO Agreement and the other agreements provided in Annexes 1-4. The Ministerial Conference is held at least once every two years, and the General Council, which is held whenever necessary, meets as the Dispute Settlement Body (DSB) and the Trade Policy Review Body (TPRB). In addition, there are the Council for Trade in Goods (Goods Council), the Council for Trade in Services (Services Council), and the Council for Trade-Related Aspects of Intellectual Property (TRIPS Council) as well as Working Parties (WP) in the respective areas of trade.

The membership of the Ministerial Conference, the topmost decision-making body, consists of ministers of all WTO members, and it makes decisions on all matters under any of the multilateral trade agreements. The General Council, whose membership consists of all WTO members, handles day-to-day work as follows:

- It acts on behalf of the Ministerial Conference on all WTO affairs.

- It settles disputes between members.
- It analyzes members' trade policies.

Decisions are generally made by consensus (i.e., unanimous approval by all members). However, when consensus is not possible, the following is used.

- For the adoption of an interpretation of any of the multilateral trade agreements, a majority of three-quarters of WTO members is necessary.
- For a waiver of an obligation imposed on a particular member by a multilateral agreement, a three-quarters majority is necessary.
- For the amendment of provisions of the multilateral agreement, approval is either by all members or a two-thirds majority. In the latter case, however, amendments only take effect for those WTO members that accept them.
- For the admission of a new member, a two-thirds majority in the Ministerial Conference (or in the General Council in between conferences) is necessary.

2.5 The GATT trade liberalization rounds

Through forty-seven years, between 1948 when the attempt to establish the ITO failed and 1994, the GATT provided the rules for much of international trade. In this half a century, the multilateral trade system was greatly strengthened through rounds of negotiations concerning trade liberalization by member countries. Eight rounds of multilateral trade negotiations were held before the establishment of the WTO. The fifth round, known as the Dillon Round, was held for the period 1961 and 1962, and was followed by the sixth round, known as the Kennedy Round, held for the period 1964 and 1967 and the seventh round, known as the Tokyo Round, held for the period 1973 and 1979. Finally, the eighth round, the Uruguay Round was held from 1986 to 1994. The first five rounds of trade negotiations were known as "tariff rounds" which were concentrated on reducing tariffs of industrial goods, and each negotiation was relatively short. On the other hand, all the trade rounds held after the sixth round, the Kennedy Round, were quite extensive and were known as the "Trade Rounds" (see Table II-2).

Table II-2. The GATT and the WTO trade rounds

Year	Place/name	Subjects agreed, covered areas of trade, etc.	Countries
1947	Geneva	Tariff reductions	23
1949	Annecy (France)	Tariff reductions	13
1951	Torquay (U.K.)	Tariff reductions	38
1956	Geneva	Tariff reductions	26
1960~1961	Geneva *Dillon Rounds*	Tariff reductions	26
1964~1967	Geneva *Kennedy Round*	Tariff reductions Anti-dumping measures	62
1973~1979	Geneva *Tokyo Round*	Tariff reductions Non-tariff measures "Framework" agreements	102
1986~1994	Geneva *Uruguay Round*	Tariff reductions Non-tariff measures Agreements on services, intellectual property rights, dispute settlement, textiles, agriculture and many other areas of negotiations Agreement on the creation of the WTO	123

Source: WTO "Trading into the Future" Chapters 1-4, Second edition, revised April 1999

Through these extensive trade liberalization rounds, tariff reductions made sure and steady progress, and trade-related rules other than those of tariffs were also provided. In particular, the Kennedy Round brought about a great reduction in tariff rates as well as a GATT Anti-Dumping Code agreed among a relatively small numbers of GATT members. At the Tokyo Round, besides its tariff reduction efforts, negotiations on trade barriers that take a form other than tariffs were agreed among some of the members (such as the Anti-Dumping Code, Subsidies and Countervailing Measures Code, Customs Valuation Codes, etc.). These "Codes" initially agreed only among some members at the Tokyo Round were eventually turned into multilateral commitments accepted by all WTO members at the Uruguay Round.[28] In addition, the Uruguay Round led to a new set of agreements, namely the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). All these efforts put in the series of multilateral trade negotiation rounds resulted in the Marrakesh Declaration and the creation of the WTO in 1994.

2.6 Difference between the GATT and the WTO

In general, the General Agreement on Tariffs and Trade implies two things. Firstly, the GATT as "an international agreement" provides the rules for conducting international trade. Secondly, the GATT as "an international organization" was created so as to support the agreement. One can say, therefore, that the GATT no longer exists as an organization, whereas the GATT as an international agreement lives on and is still expanding, even after the WTO came into effect on January 1, 1995.

The WTO Agreements include the General Agreement on Tariffs and Trade 1994,[29] which provides rules

[28] Codes on government procurement and trade in civil aircraft remain "plurilateral" agreement.

[29] The GATT Agreement was updated in 1994 and called "GATT 1994"; the old text is now called "GATT 1947."

for trade in goods, as well as the new General Agreement on Trade in Services and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). These three areas of trade were successfully brought together under the WTO system, providing a single set of rules and a single system for resolving disputes.

The differences between the GATT and the WTO are summarized in Table II-3.

Table II-3.Differences between the GATT and the WTO

	GATT	WTO
Legal Basis for the Organization	It was **ad hoc and provisional** in the sense that the General Agreement was never ratified in members' parliaments, and it contained no provisions for the creation of an organization.	It is **permanent** in the sense that members have ratified the WTO agreements, and that the agreements themselves describe how the WTO as an international organization is to function.
Participating Countries	It had **"contracting parties"** since the GATT officially implied a legal text.	It has **"members."**
Areas of Trade	It dealt with trade in goods.	It covers, **goods, services and intellectual property.**
Dispute Settlement System	· **Each of its agreements contains dispute settlement rules** for the areas they cover. · Rulings are adopted by **consensus,** which means that a single objection could block the ruling. · It had **no fixed time table**, which prolonged the dispute settlement procedure.	· It provides **a single system for dispute settlement.** · Rulings are adopted by a **negative consensus**, which implies that rulings are automatically adopted unless it is rejected by consensus. · It sets **a shorter time frame** for the dispute settlement procedure.

Source: WTO "Trading into the Future" Chapters 1-6, Second edition, revised April 1999

2.7 Accession to the WTO

2.7.1 Negotiations for the accession

Two sets of negotiations, multilateral and bilateral, run in parallel in the accession process (see Figure II-3).

- *Multilateral negotiations*: negotiations are conducted at the WTO Working Party (WP) between the government applying for the membership and all the WTO members. The economic and trading systems (including tariff systems) of the prospective new member are reviewed, and a "protocol of accession," which prescribes the country's terms of accession, is drawn up through these negotiations.
- *Bilateral negotiations*: negotiations are conducted between the prospective new member and individual member countries that wish to negotiate. These negotiations involve requests and offers from both sides with regard to tariff reductions, the elimination of non-tariff barriers, and commitments in services, which are all intended to improve access to the applicant's markets. In the process, lists ("schedules") of the member-to-be's commitments in tariff reductions and services must be completed.

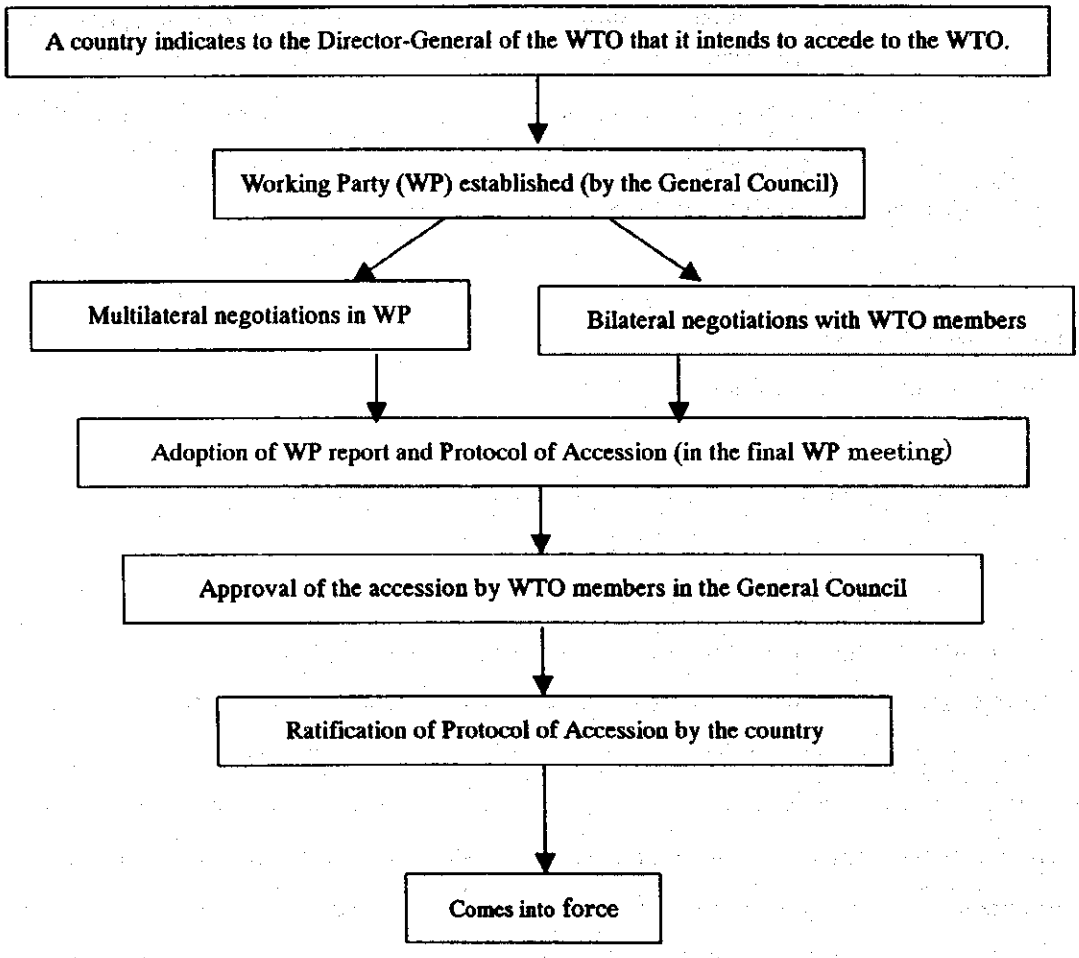
2.7.2 Decisions on accession

According to the Agreement Establishing the WTO, the Ministerial Conference makes the decision on accession. In the intervals between conferences, the General Council acts on behalf of the Ministerial Conference. Approval is generally made by consensus. In cases where consensus is not possible, a two-thirds majority vote by WTO members is enough for accession.

2.7.3 When does accession come into force?

It is written in the "Protocol of Accession" that accession comes into effect on the thirtieth day after the day the protocol is put in the secretary-general's charge (following acceptance of the protocol by the prospective new member).

Figure II-3.The WTO accession process



3. Dispute settlement mechanisms

As shown in the Figure II-2, the Dispute Settlement Body (DSB) is the General Council in another guise that helps settle disputes between the member countries. It does this based on the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). The dispute settlement procedure covers disputes over the Agreement Establishing the WTO as well as all the agreements under Annex 1, and those over the DSU itself.

3.1 Special features of the dispute settlement mechanisms

The old dispute settlement system under the GATT was amended under the WTO for more effective mechanisms and procedures. The following list features the four major improvements made under the WTO.

- *A Two-Tiered Reviewing System*: The first tier is equal to the GATT's "panels". In addition, the new system allows the country losing the case to appeal a panel's ruling to the Appellate Body.
- *Introduction of "Negative Consensus" for Adoption of Rulings*: Under the old GATT system, rulings could only be adopted by consensus and accordingly, rulings were easily blocked by the country on the losing side. However, in the new system, panel reports and appeals reports are automatically adopted as rulings unless there is a consensus rejection.
- *Timeframes Set for Review Processes*: In order to shorten the length of time a case should take to be settled, time limits are set in various stages of review processes. In principle, the panel should conclude within six months, and appeals should not last more than sixty days.
- *A Single System for Dispute Settlement*: It is forbidden to take action unilaterally (such as application of Section 301 of the U.S. Trade Act of 1974) and members are obliged to use the WTO's multilateral system of settling disputes. WTO members should give the WTO's dispute settlement procedure a priority over those provided in GATT related agreements such as the Anti-Dumping Agreement, Agreement on Subsidies and Countervailing Measures, etc.

3.2 Dispute settlement procedures

The dispute settlement procedures defined in the Understanding on Rules and Procedures Governing the Settlement of Disputes is as follows (see Figure II-4):

① **Consultations**: Any member country can request a consultation regarding a fellow member country in disputes if it considers that benefits accruing to it under the GATT/WTO Agreement are being nullified or impaired by the fellow member (GATT Articles XXII: 1 and XXIII: 1).

- Bilateral consultations defined under GATT Article XXII: 1 can be called "with respect to any matter affecting the operation of the Agreement." Third-country participation is also permitted.
- Bilateral consultations defined under GATT Article XXIII: 1 can be requested when it is considered that any benefit accruing to a country under the Agreement is being nullified or impaired as a result of (a) the failure of a member country in carrying out its obligations under the WTO Agreement (i.e., violation of the WTO Agreement), (b) the application by a member country of any measure, whether or not it conflicts with the provisions of the Agreement (the so-called non-violation complaints[30]), or (c) the existence of any other situation (the so-called situation complaints). However, participation by the third party is not permitted in the consultations.

② **Panel establishment requests** (known as the GATT/ WTO appeals): If consultations fail 60 days after the acceptance of a request of consultations, the complaining country can ask for a panel to be appointed at the DSB (GAT Article XXIII: 2). Appointment of the panel is done by a "negative consensus". A Panel consists of three to five experts who are to be appointed from a list of proposed panelists proposed by the Secretariat. If agreement is not reached within 20 days of the establishment of the panel, the Secretary-General appoints panelists. The panel's report should be, in principle, handed in within 6 months (9 months maximum) to the DSB, at which the report should be adopted by a negative consensus (the entire process should conclude within 9 months after the panel establishment).

③ **Appeals to the appellate body**: Either of the disputing countries can appeal a panel's ruling to the Appellate Body. The appeals report should be, in principle, provided within two months (three months at the latest) to the DSB, at which the report should be adopted unless a consensus rejects if (the entire procedure should be completed within twelve months from the panel's establishment). The Appellate Body is a permanent institution consisting of seven experts (serving 4-year terms) who are appointed by the Secretariat.

④ **Recommendation**:

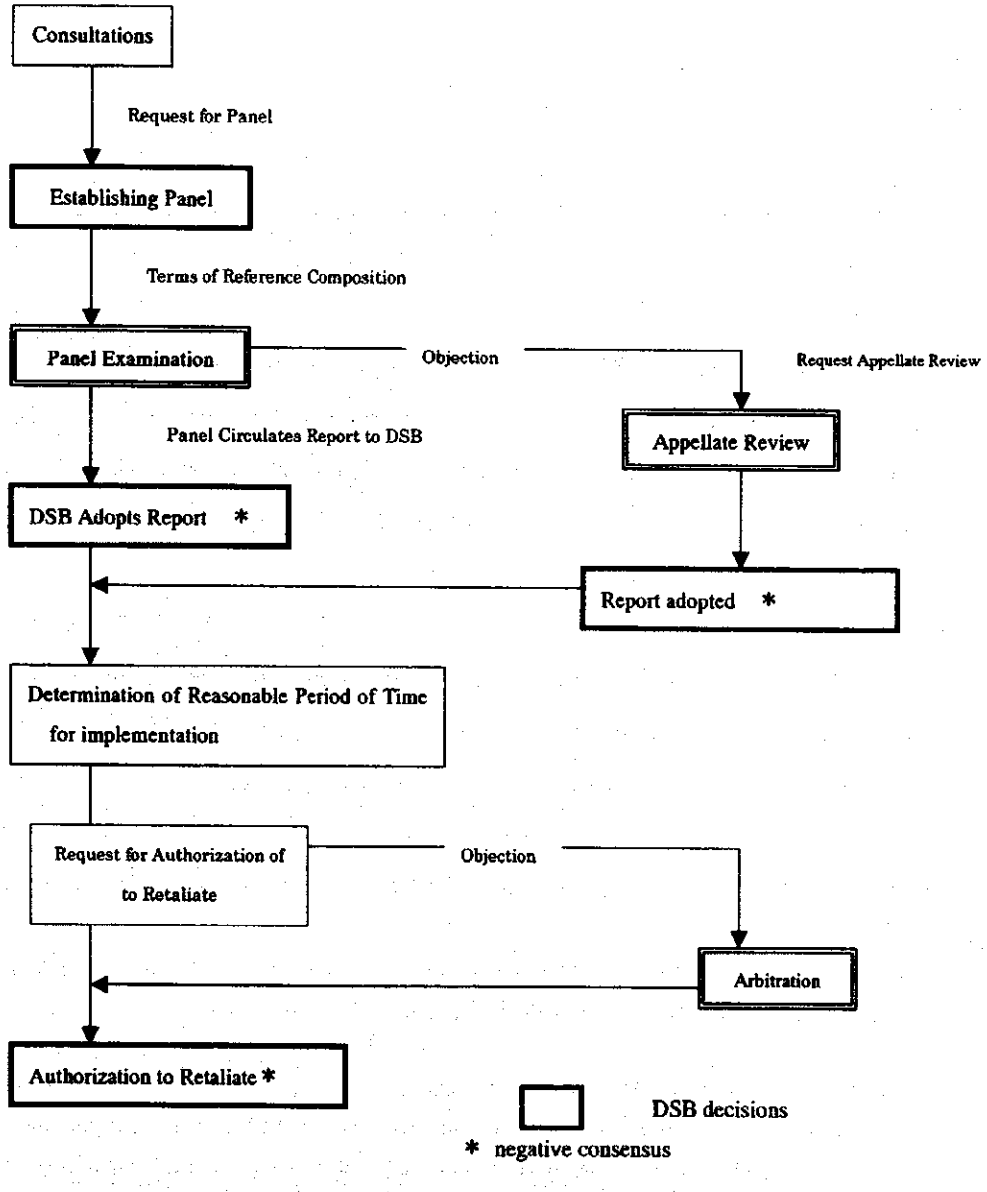
- *In the case of "violation complaints" defined under GATT Article XXIII: 1 (a)* A panel report becomes a WTO ruling after its adoption by the DSB → It will recommend that the member concerned bring its trade measures into conformity with the WTO Agreements.
- *In the case of "non-violation complaints" defined under GATT Article XXIII: 1 (b)* A panel report is adopted by the DSB → The defendant country is not obliged to withdraw the measure concerned → The disputing countries should make a mutually satisfactory adjustment (such as by providing tariff concessions in other areas of trade).
- *In the case of "situation complaints" defined under GATT Article XXIII: 1 (c)* A panel report is to

[30] According to the panel decisions in the past, three conditions had to be met for "non-violation" complaints: (1) a certain trade measure taken by another country had to have upset competitive conditions between imported products; (2) the measure could not have been reasonably anticipated; and (3) a tariff concession had to have been made previously.

be adopted by a consensus, not by the negative consensus rule.

- **Implementation of the proposed recommendation:** In principle, recommendation of the panel report or the appeals report should be implemented immediately, at least within a "reasonable period of time" (i.e., 150 days [maximum of 18 months] after the adoption of either kind of report.
- **Request for a retaliation:** If twenty days pass beyond the "reasonable period of time" and no satisfactory compensation is agreed, the complaining country can ask the DSB for permission to impose retaliation measures against the defendant country. If the authorization is granted, the complaining country can impose, in principle, trade sanctions in the same sector as the disputes. In some cases, cross-retaliation in a different sector of the agreement can be imposed as well.

Figure II-4.Dispute settlement procedures based on the DSU



Source: WTO"Trading into the Future"Chapter 3-2 *The Panel Process*, Second edition, revised April 1999

4. Special arrangements for developing countries under the WTO

About 100 of the WTO's 138 countries and regions are developing countries, and they are expected to play a greater role in the WTO because of their numbers. As developing countries gain economic strength, they are becoming more important in the global economy. In responding to the special needs of developing countries, the WTO provides the following three arrangements:

- Each of the WTO agreements contains special provisions on developing countries.
- The Committee on Trade and Development (CTD) was created (see Figure II-2) in 1964 so as to enhance the application of the rules stated under GATT Articles XXXVI to XXXVIII in Part IV "Trade and Development" (mentioned below in detail).
- The WTO Secretariat provides technical assistance through various kinds of training for developing countries.

4.1 Special provisions

The WTO agreements include special provisions (main examples of which are listed below) for developing and least-developed countries.[31]

(1) *The GATT under the heading of "Trade and Development" (Part IV)*[32] allows developing countries and least-developed countries to be exempted from the principles of most-favored nations (MFN) treatment. Part IV includes provisions such as Article XXXVIII, Joint Action, in which the concept of non-reciprocity in trade negotiations between developed and developing countries is defined. The provision clarified that when developed countries grant trade concession to developing countries, they should not expect the matching offers from developing countries in return. However, after the Uruguay Round the interpretation of the provision had evolved to mean that developing countries no longer were granted non-reciprocity, but were asked to act on the basis of the rules of relative-reciprocity in which developing countries were expected to offer what they could relative to their development.

(2) *Contracting Party Decision on November 28, 1979 ("Differential and More Favorable Treatment*

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[31] See WTO"Trading into the Future"Chapter 6, *Developing Countries*, Second edition, revised April 1999 and Takase Tamotsu "The Expanded GATT and the Uruguay Round" Chapter 6, *Developing Countries and the GATT* (1995) for more details.

[32] This section (Part IV) was added to the GATT's text in 1964, and came into effect from 1966. It consists of three Articles, namely XXXVI (principles and purposes), XXXVII (commitments), and XXXVIII (joint actions). Note that the Article XXXVII concerns developed countries' commitments towards fellow-developing countries with regard to their basic trade policies.

Reciprocity and Fuller Participation of Developing Countries", the so-called Enabling Clause) made permanent all the provisional agreements regarding special treatment of the developing countries such as the Generalized System of Preference (GSP), Special Treatment for Least-Developed Countries, and Regional Trade Agreements (RTAs) among Developing Countries. This enabled developing countries to receive more concessions from developed countries without having to do the same in return. Nevertheless, in order to benefit from the system, developing countries should meet the following conditions defined under the Enabling Clause: (1) the special treatment should not become a trade barrier against other member countries, and (2) the treatment should not hinder the entire process of eliminating trade barriers such as tariffs in conformity with the MFN principle.

- **GSP** and the **Special Treatment for Least-Developed Countries:** GSP was agreed at the second general meeting of the United Nations Conference on Trade and Development (UNCTAD) in 1968, enabling developing countries to receive special tariff concessions from developed countries without returning the favor. In addition, a waiver clause was added to the GSP at the GATT in 1971, resulting in a considerable increase in the number of developed countries that had adopted the GSP. In other words, the GSP used to be a provisional measure for special tariff concessions (i.e., tariff rates lower than those based on MFN treatment) that was unilaterally granted by developed countries on imports from certain developing countries. It became a GATT ruling by the contracting party decisions of 1979. Currently, many developed countries are granting least developed countries more preferential tariff rates than those generally granted under the GSP. However, one cannot deny the erosion of preferences that occur as the difference between the normal (i.e., MFN) tariff rates and preferential rates is gradually reduced to nil, due to the two conditions attached to the Enabling Clause as mentioned above. This implies that developing countries can not hinder the overall process of reducing MFN tariff rates as a means to counter the erosion of preferences.
- **RTAs among developing countries:** The Enabling Clause allowed developing countries to form Regional Trade Agreements among fellow-developing countries on a regional and global basis, RTAs in which measures for the mutual reduction or elimination of tariffs and non-tariff barriers were exempted from the MFN principle. Developed countries entering into similar agreements, were required to strictly abide by the conditions (see Table II-4) stated under GATT Article XXIV, since any economic integration among developed countries would have a great impact on other countries outside the RTAs. Such arrangements among developing countries were treated with more tolerance since their economic impacts were very small. Likewise, the GATS allows developing countries some special treatment under the heading "Economic Integration" (Part V of GATS).

(3) *Other preferential measures* concerning developing countries in the WTO agreements are as follows:

(i) provisions that permit developing countries to have transition time (i.e., extra time) in fulfilling their

commitments, (ii) provisions designed to increase developing countries' trading opportunities through greater access to developed countries' domestic markets (such as in textiles, services, and those amounting to technical barriers to trade), and (iii) provisions requiring members to safeguard the interests of developing countries when adopting trade measures (such as anti-dumping, safeguards, technical barriers to trade).

Table II-4.Conditions under GATT Article XXIV

	Article XXIV: 5	Article XXIV: 8
Customs unions	(a) General levels of duties and other regulations of commerce should not be higher or more restrictive against countries outside the territories than they were prior to the formation.	(a) (i) The duties and other restrictive regulations of commerce (except, where necessary, those permitted under the Articles XI, XII, XIII, XIV, XV and XX) are eliminated with respect to "substantially all the trade" between the constituent territories of the union. (ii) Substantially same duties and other regulations of commerce are applied to the trade of territories not included in the union.
Free Trade Areas (FTAs)	(b) The duties and other regulations of commerce shall not be higher or more restrictive than those previously existing in the same constituent territories prior to the formation.	(b) The duties and other restrictive regulations of commerce (except, where necessary, those permitted under the Articles XI, XII, XIII, XIV, XV and XX) are eliminated on "substantially all the trade" between the constituent territories.
Interim agreements	(c) Any interim agreement shall include a plan and schedule for the formation of either a custom union or a FTA within a reasonable length of time.	

(Note 1) Any contracting party deciding to enter into a customs union or FTA or an interim agreement, shall promptly notify the WTO (Article XXIV: 7 (a)). In response, the contracting parties will discuss and review the plans and schedules in the interim agreement with the parties to the agreement, and the contracting parties shall make recommendations where appropriate (Article XXIV:7 (b)).

(Note 2) With respect to a customs union, in order to fulfill the requirements of Article XXIV: 5 (a), when a contracting party proposes to increase any rate of duty inconsistent with Article II, the procedures set forth in Article XXVIII shall apply for compensatory adjustment (XXIV: 6).

Source: p369 "Report on the Consistency of Trade Policies by Major Trading Partners," MITI, 2000)

4.2 The WTO Committee on Trade and Development

The WTO Committee on Trade and Development was established so as to enhance the rules stated in Part IV under the heading of "Trade and Development" that was newly added to the GATT agreements text in 1964. The CTD has a wide-ranging mandate, some of which are listed below.

- It examines how provisions favoring developing countries are being implemented.
- It provides guidelines for technical cooperation.
- It helps to increase participation of developing countries in the trading system.
- It ensures the position of least-developed countries. (The Subcommittee on Least Developed Countries examines trade issues with regard to least-developed countries. Note that the least-developed countries without WTO membership can also attend the subcommittee.)

In addition, the CTD handles notifications concerning the following:

- GSP when developed countries lower their trade barriers preferentially for products from developing countries
- RTAs among developing countries

4.3 WTO technical cooperation (training, etc.)

Technical cooperation of the WTO in intended to help developing countries and countries in transition from centrally-planned economies operate successfully in the multilateral trading system, as well as to help build the necessary institutions and to train officials. It holds regular training sessions on trade policy in Geneva and carries out other technical cooperation activities (i.e., seminars and workshops) in various countries (such as in Asia, Latin America, the Caribbean, the Middle East and the Pacific).

5. Summary of WTO Agreements

Among the various multilateral negotiations that took place under the GATT, the Uruguay Round took the longest to conclude, the legal text of which is a daunting list of about sixty agreements, annexes, decisions and understandings summed up in the "Agreement Establishing the World Trade Organization" and several annexes (i.e., Annexes 1-4) (see Figure II-1). Annexes 1A, 1B, 1C, 2 and 3 are integral parts of the Agreement Establishing the WTO and are binding on all WTO members (135 countries/regions as of February 2000).[33] In order to understand these massive legal texts, we will try to explain them by simplifying the basic structure of the WTO Agreements as shown in Table II-5. Along with the many trade and economic benefits that come with accession, all countries hoping to join the WTO, including Viet Nam, which is now negotiating for membership, take on the responsibility to bring their internal institutions into conformity with WTO Agreements. While this is a natural obligation it is vital to understand exactly what this means.

In order to enhance the understanding of the WTO Agreements, its basic structure is summed up in Table II-5, which is also an abstract of the WTO Agreements listed in Figure II-1 in the beginning of this section.

[33] The agreements included under Annex 4 are independent agreements that are binding only on their signatories.

WTO Agreements with regard to trade in goods and services have a three-layered structure in which the first layer consists of agreements on broad principles such as GATT and GATS. The second layer consists of extra agreements and annexes dealing with specific industrial sectors. And the third layer consists of the detailed schedules of commitments made by individual countries, such as binding commitments on tariffs for goods, commitment lists that show how much access foreign service providers are allowed, and lists of types of services that are exempted from having to apply the MFN principle of non-discrimination.

In addition, there are two other groups of agreements that are not included in the diagram, namely the Trade Policy Review Mechanism (TPRM) (Annex 3) and the two "plurilateral" agreements (covering civil aircraft and government procurement) not signed by all members (Annex 4).

Table II-5.Basic structure of the WTO Agreements

	Goods	Services	Intellectual Property	Trade Disputes
Basic principles	GATT (GATT 1994 under Annex 1A)	GATS (Annex 1B)	TRIPs (Annex 1C)	Dispute Settlement (Annex 2)
Additional agreements	Agreements other than GATT1994 under Annex 1A (Agriculture ~ safeguards)	Services annexes	None so far (will be added in the future).	
Market access commitments	Schedule of commitments made by individual countries (such as binding commitments on tariffs for goods)	Schedule of commitments made by individual countries (such as foreign access lists and a list of sectors exempted from the MFN principle		

Source: WTO "Trading into the Future" Chapter 2 *The Agreements*, Second edition, revised April 1999

In the following chapter, we will summarize the WTO Agreements in the four important areas listed below, with due consideration to the basic structure of the agreements mentioned above.

- Three basic principles common to all WTO agreements (most-favored-nation treatment, national treatment, and abolition of quantitative restrictions)
- Agreements on merchandise trade, especially bound tariffs and the three exceptions (safeguards, subsidies and countervailing measures, and anti-dumping measures)
- Agreements on non-merchandise areas (agreements on services and intellectual property rights)
- Agreements on transparency in trade procedures (TRIMS, Rules of Origin, TBT, SPS)

5.1. Three basic principles common to all WTO Agreements

(Most-favored-nation treatment, national treatment, and abolition of quantitative restrictions)

5.1.1 Most-favored-nation (MFN) treatment principle

Overview of the MFN treatment principle

The MFN treatment principle is one of the fundamental principles of the WTO Agreements. Under the MFN treatment principle, the most favorable tariff and regulatory treatment given to the product of any one member is to be provided equally to all WTO members. Details of the MFN treatment are stipulated in GATT Article I: 1, XIII and XVII. The MFN treatment principle has been also extended to the areas of trade in services and intellectual property under the WTO Agreement.

- GATT Article I: 1 (MFN in General): WTO members are required to accord MFN treatment to "like products" of other WTO members with regard to tariffs, regulations on exports and imports, internal taxes and charges, and internal regulations.
- GATT Article XIII (Non-Discriminatory Administration of Quantitative Restrictions): WTO members are required to apply MFN treatment in the administration of quantitative restrictions or tariff quotas on any product. Also members shall aim to allocate shares close to that which might be expected in the absence of restrictions.
- GATT Article XVII (State Trading Enterprises): State enterprises that are established by or maintained by a WTO member, or private enterprises granted exclusive or special privileges by the member and which make purchases or sales involving either imports or exports are called "State Trading Enterprises." WTO member countries are obliged to act in accordance with the rules of non-discrimination, including the MFN rule.

The positive economic implication of the MFN treatment principle is the improvement of economic efficiency, examples of which are listed below.

- *Increased efficiency in world trade:* MFN treatment makes it possible for countries to allocate resources most efficiently in accordance with the principle of comparative advantage.
- *Stabilization of the free trade system:* According to the MFN treatment rule, restrictions must also be applied equally to all the members. This makes the introduction of trade restriction much more costly with the risk of political intervention from other countries. Thus members tend to aim for the stabilization of the free trade system and increase trade and investment.
- *Reduction of the cost of maintaining the free trade system:* The establishment and maintenance of the MFN treatment rule enables WTO members to reduce the cost of monitoring and negotiations when requesting remedies to disadvantageous treatment. In addition, as long as the MFN treatment

rule is honored, determining an import's origin becomes unnecessary, which improves economic efficiency.

Exceptions to the MFN treatment principle

Certain exceptions are provided to the MFN treatment rule as seen in the following rules:

- *Regional integration (GATT Article XXIV):* Regional integration may be allowed as an exception to the MFN rule only if the following conditions are met: (a) tariffs and other trade barriers are eliminated with respect to substantially all trade within the region, and (b) the tariffs and other trade barriers applied to outside countries must not be higher or more restrictive than they were prior to establishment of regional integration.
- *Generalized System of Preferences (GSP):* The GSP is the system that grants products originating in developing countries lower tariff rates than those normally enjoyed under MFN status as a special measure (it is a measure taken based on the decision on "Differential and More Favorable Treatment, Reciprocity, and Fuller Participation of Developing Countries," or the "Enabling Clause").
- *Non-application of Multilateral Trade Agreements*[34] *between particular member states* (WTO Article XIII): Most-favored-nation treatment shall not apply between a WTO member and another member concerned when either of the following conditions are met: (1) In cases when Article XXXV of the GATT 1947, which allows discriminatory treatment between the original members of the GATT 1947, had been applied in advance and was still effective at the time the WTO went into force, or (2) in case when, prior to the Ministerial Conference's approvals of the agreement on the terms of accession, either a WTO member or prospective new member has notified the Ministerial Conference (or the General Council) that it does not consent to the accession application. Since the WTO only requires the consent of two-thirds of the existing membership for accession, it became a lot easier for the prospective new members to achieve membership. WTO Article XIII allows non-application of the WTO multilateral Trade Agreements for countries that do not wish to have a WTO relationship with the prospective new member.
- *Other exceptions* peculiar to the MFN principle include: GATT Article XXIV regarding frontier traffic with adjacent countries; GATT Article I: 2 regarding historical preferences which were in force at the signing of the GATT (such as the British Commonwealth); GATT Article XX regarding the general exceptions for measures necessary to protect public morals, life and health, etc.; GATT Article XXI regarding security exceptions; and GATT Article IX: 3 regarding exceptions obtained by waiver (which require the consent of three-quarters of the WTO members).

[34] "The Multilateral Trade Agreements" refers to the Agreement Establishing the WTO and the Multilateral Trade Agreement in Annexes 1 and 2.

5.1.2 National treatment principle

Overview of the national treatment rule

The National Treatment Principle is one of the fundamental principles of the WTO Agreements. Under the rule, the WTO members must not discriminate between imports and domestic "like products" (except for the imposition of tariffs). Under GATT Article III, all WTO members are required to provide national treatment to all members.

- GATT Article III:1 (National Treatment Principle): This provides that WTO members must not apply internal taxes or other internal charges, laws, regulations and requirements affecting imported products so as to afford protection to domestic production.

Economic implications of the national treatment principle are elimination of the hidden barriers to trade such as domestic taxes and regulations, and promotion of trade liberalization by limiting domestic industry protection to the use of tariffs.

Exceptions to the national treatment principle

The national treatment principle is not applied in the following cases:

(1) *Government procurement* (GATT Article III: 8(a)): This provides that government procurement is one of the exceptions to the national treatment rule, and permits governments to purchase domestic products preferentially. Government procurement is often used as a policy tool to promote national security, small-size business, local industry or advanced technologies. Nevertheless, the national treatment rule applies for those mostly developed countries who have acceded to the Agreement on Government Procurement (Annex 4).

(2) *Domestic subsidies* (GATT Article III: 8(b)): This allows for the payment of subsidies exclusively to domestic producers as an exception to the national treatment rule. In order to avoid negative impact on trade, the WTO members are obliged to meet the condition that such payment is not in violation of the Agreement on Subsidies and Countervailing Measures (SCM).

(3) *Exceptions offered to those members in the early stages of development* (GATT Article XVIII: C): WTO members in the early stages of development can raise their standards of living by promoting the establishment of infant industries. In such case, countries can use the provisions of GATT Article XVIII: C to notify other WTO members of their intent and initiate consultations. After consultations are completed, and under certain restrictions, these countries are then allowed to take measures that are inconsistent with GATT provisions excluding Articles I, II, and XIII. For example, in a case concerning Malaysia's import permit system for petrochemical products, Malaysia resorted to GATT Article XVIII: C in order to enforce import restrictions on polyethylene and polypropylene.

(4) *Other exceptions*: Exceptions peculiar to national treatment include the one that allows screen quotas on cinematographic films under GATT Article III: 10 and Article IV. The provisions of GATT Article XX (on general exceptions), GATT Article XXI (on security exceptions), and WTO Article IX (on waivers) also apply to the national treatment rule.

5.1.3 Abolition of quantitative restrictions principle

Overview of the abolition of quantitative restrictions

The principle of the abolition of quantitative restriction is one of the fundamental principles of the WTO Agreements. Under GATT Article XI, WTO members are prohibited from instituting or maintaining any restriction other than duties, taxes or other charges. This is because quantitative restrictions are considered to have a greater trade distorting effect than tariff measures.

- GATT Article I: 1 prohibits, in principle, quantitative restrictions on the importation or exportation of any product between WTO members.

Exceptions to the abolition of quantitative restrictions

Provisions regarding the exceptions to the principle of abolition of quantitative restrictions are listed below. These exceptions cannot be criticized as unfair trade measures as long as they are permitted temporarily under limited conditions.

① *Preventing critical shortages of foodstuffs* (GATT Article XI: 2 (a)): It is permitted to apply export prohibitions temporarily in order to prevent or relieve critical shortages of foodstuffs essential to the exporting WTO members.

② *Safeguarding the balance-of-payments* (BOP)(GATT Article XVIII: B): This provides that quantitative restrictions to safeguard the balance of payments regarding developing WTO members in the early stages of economic development are permitted when the International Monetary Fund finds that the country is experiencing BOP difficulties (GATT Article XV: 2). As for WTO members in general, similar provisions are provided under Article XII. However, when a country is designated to be an "IMF Article VIII country," it is not generally allowed to institute foreign exchange restrictions.

③ *Other exceptions regarding legitimate policy measures under the GATT:*

- GATT Article XI: 2 (b): Application of standards or regulations for the classification, grading or marketing of commodities in international trade
- GATT Article XI (c): Government measures to restrict the production of domestic agricultural or fisheries products

- GATT Article XX: General exceptions
- GATT Article XXI: Exception for security reasons
- GATT Article XVIII: C, D: Development of a particular industry by a developing WTO member in the early stages of economic development or in certain other situations
- GATT Article XIX (Safeguards): Preventing sudden increases in imports from causing serious injury to domestic producers or relieving producers who have suffered such injury
- GATT Article XXIII: 2: Retaliatory measures authorized by the Dispute Settlement Body in the event that the recommendations and rulings of a panel are not implemented within a reasonable period of time
- WTO Article IX: Pursuant to a specific waiver of obligations

5.2. Tariff bindings and the three exceptions (Agreements involving trade in goods)

5.2.1 Tariff "bindings"

Overview of the rule

GATT Articles II and XXVIII: 2 provide that WTO members are permitted to use tariffs as a legitimate government measure to protect domestic industries, which is one of the fundamental principles of the WTO Agreements. Under the principle, WTO members are obliged to reduce tariff rates, which are considered as a typical trade barrier, progressively. In other words, the WTO bans, in principle, all quantitative restrictions, but allows for imposition of tariffs for a while and attempts to reduce the barrier posed by tariffs in tariff negotiations among member countries. Accordingly, the members agree to bind themselves to maximum rates (bound rates) for individual items and negotiate for the mutual reduction of bound rates and effective rates in a progressive manner thereafter.

- GATT Article II: This obligates all WTO members to apply tariff rates that are no higher than their bound rates.
- GATT Article XXVIII: When members wish to raise their bound rates or withdraw tariff concessions, they must negotiate and reach agreements with other members with whom they had initially negotiated and enter into consultations with major supplying countries that have a substantial interest in any change in the bound rate.

* *Tariff classifications:* As a uniform tariff classification system, most countries use the Harmonized Commodity Description and Coding System (HS) drafted in 1988 at the Customs Cooperation Council (now known as the World Customs Organization, or WCO). In addition, in order to maintain uniform administration of the HS, Article 3.1 of the International Convention on the Harmonized Commodity

Description and Coding System obligates all the signatories not to modify the scope of the sections, chapters, headings, or subheadings of the HS. The HS classifications are reviewed on a regular basis. If the classification of a good changes in such a way as to raise its bound rate as a result of these reviews, countries must enter into negotiations under the terms of GATT Article XXVIII.

When a member country wishes to raise the tariff rate of a certain item to a level above its bound rate, which is prohibited by Article II, that country must raise the bound rate by going through the negotiating process obliged under GATT Article XXVIII. On the other hand, in terms of WTO rules there are no problems in keeping high effective tariff rates (within the scope of their bound rates), in not agreeing to bind most items, or in raising the tariff rates of non-bound items. Nevertheless, imposition and maintenance of such measures do run against the spirit of the WTO, which is based on the idea of using "binding" to reduce tariffs. Sudden hikes in tariff rates obviously have a detrimental impact on trade, so WTO members are expected to agree to refrain from using such measures and keep to the general reduction of tariff rates. In addition, WTO members are to work towards increasing the percentage of items that are subject to bound rates (total value of imports subject to bound tariffs divided by total value of imports), which means decreasing the number of non-bound imports.

As a result of the Uruguay Round, developed countries increased the number of imports with bound tariff rates from seventy-eight percent to ninety-nine percent of product lines. As for developing countries, the increase was from twenty-one to seventy-eight percent. Countries in transition from centrally planned economies increased their bindings from seventy-three to ninety-eight percent. In all countries, agricultural products are bound, and almost all non-tariff import restrictions, such as import quotas, have been converted to tariffs as a temporary measure.

5.2.2 Tariff concessions and the three principles

As outlined above, the application of bound tariffs for all WTO member countries is a key component of the promotion of free trade under the WTO system. This does not apply, however, for the following three forms of trade provision:

- Anti-dumping (AD)
- Countervailing duties (CVD)
- Safeguards (emergency import restrictions)

5.2.2.1 Anti-dumping measures

Overview of rules

If dumping, which refers to a situation in which the export price of a product is lower than its selling price in the exporting country, causes injury to the competing industry in the importing country, the importing country can impose anti-dumping measures to provide relief to those domestic industries. GATT Article VI and the Anti-Dumping Agreement under the WTO provide anti-dumping rules. In practice, should a member country resort to anti-dumping measures, it must go through the following procedures.

① *Determination of injury*[35]: The investigating authority must have (a) evidence to substantiate dumping, (b) proof that the dumping has resulted in injury to a competing domestic industry in the importing country, and (c) sufficient proof of causality between the dumping and the injury.

② *Determination of dumping margins*: The dumping margin is determined by calculating the difference between the export price and the domestic selling price in the exporting country on the basis of fair price comparison. In comparing the prices, if a comparable domestic selling price is not available, either export prices to third countries or a constructed value[36] can be used. If a comparable export price is not available, the comparison can be based on the price at which the product is first resold to independent buyers or on a price reasonably determined by the authorities. In addition, the Anti-Dumping Agreements (AD, hereafter) include the following provisions in order to further ensure fair price comparison:

- AD Article 2.4 provides that comparison shall be made at the same level of trade, and in respect of sales made at as nearly as possible the same time. Also, due allowance shall be made, on its merit, for differences which affect price comparability.
- AD Article 2.4.1 states that the authority shall make allowances for a conversion of currencies within a limited time period.
- AD Article 2.4.2 prescribes that margins shall be, in principle, established on the basis of a comparison of weighted average basis or a transaction-to-transaction basis.[37]

③ *Imposition of anti-dumping duty*: The dumped price can be adjusted to normal prices by imposing an anti-dumping duty (adding the dumping margin to the export price). Note that under the sunset

[35] "Injury" refers to three cases: material injury to a domestic industry, threat of material injury to a domestic industry, or material retardation of the establishment of such an industry.

[36] Constructed value is the cost of production in the country of origin, plus a reasonable amount for administrative, selling and general costs and for profits.

[37] Exceptions to this principle are also stated in AD Article 2.4.2, one of which permits comparisons between individual export prices and weighted -average normal prices under certain conditions.

provision of AD Article 11.3 anti-dumping duties are to be automatically terminated no later than five years from their imposition except in cases where investigating authorities have determined that dumping and injury would either continue or be resumed.

The WTO holds two meetings of the Anti-Dumping Committee (AD Committee) each year to provide a forum for discussion of anti-dumping measures. The AD Committee reviews countries' anti-dumping implementation laws for conformity to the Agreement, hears reports on countries' anti-dumping measures and discusses other related issues.

Anti-dumping measures, if abused, will have a tremendous negative impact on the pattern of trade and on the overall economy. For example, it is known that the mere initiation of an anti-dumping investigation will have a certain impact on exporters. In other words, when an anti-dumping investigation is initiated, the potential surfaces for anti-dumping duties to be imposed at some point in the future, which renders products far less attractive to importers. In addition, the initiation of investigation also places significant burdens on the companies being investigated since they must spend enormous amounts of labor, time and money to defend themselves.

The product scope that is subject to anti-dumping duties is those products and "like products" determined by investigators as being dumped on domestic markets. Accordingly, if the scope of "like products" is expanded absurdly, it can cause an adverse influence on new product development, consumer choice, and ultimately, technological advancement.

Recently, companies have been increasingly transferring their production overseas to their export markets or to developing countries where costs are lower, due to the globalization of the economy. However, when such transfers take place for products that are subject to anti-dumping levies, they are often assumed to be attempts at circumvention. Abuse of anti-circumvention measures will distort legitimate trade flows, and the utmost care should be taken in invoking them.

However, unlike safeguard measures, which are also considered to be legitimate instruments for the protection of domestic industry, implementation of anti-dumping measures is relatively easy because it does not require the accuser government to provide offsetting concessions or consent to countermeasures taken by the accused government. This lack of use restriction has increasingly led to the abuse of the anti-dumping measures -using them as tools for protectionism and import restriction. For example, anti-dumping investigations are often commenced based on insufficient evidence,[38] and anti-dumping duties may be exacted long after the conditions for their levy have been eliminated. Nevertheless, because anti-dumping measures are considered to be a legitimate means to protect domestic industry under the WTO Agreements, not only is the internal opposition to such measures

[38] According to AD Article 5.1, "investigations... will be initiated based on request in writing from or on behalf of the local industry affected by dumping."

relatively small, but the support by those importing companies who are protected by the measure is strong. It should be kept in mind, however, that it is often the consumers and user industries in the importing country that become the most serious victims of abusive anti-dumping measures.

5.2.2.2 Subsidies[39] and countervailing measures

Overview of the rules

The WTO Agreements about industrial goods, in principle, prohibit any export subsidies and subsidies contingent upon the use of domestic over imported goods, as having a particularly high trade-distorting effect. In addition, even for subsidies that are not prohibited such as those for industrial promotion, structural adjustment, regional development or research and development, the Agreements allow WTO member countries importing subsidized goods to enact countermeasures, such as countervailing duties, if such goods injure the domestic industry and certain procedural requirements are met. As for agricultural products, the WTO Agreements oblige members to reduce export subsidies and domestic supports.

Basic principles concerning subsidies and countervailing measures are provided in GATT Articles VI and XVI. In addition, as the implementation agreement for subsidies in general, there is the Agreement on Subsidies and Countervailing Measures (hereinafter the "Subsidies Agreement"). As for agricultural products, details of the provisions concerning the reduction of domestic subsidies and exports subsidies are stated under the Agreement on Agriculture.

- GATT Article VI (CVD; Countervailing Duties): This permits members to impose countervailing duties on imports other than the subsidized imports that are found to be hurting domestic producers, so as to completely remove their adverse effect on international trade.
- GATT Article VI.3 (Conditions for Imposing CVD): This prescribes that the amount of CVD that is imposed on a subsidized exporter should not exceed the estimated amount of subsidies that that exporter receives directly or indirectly from its government.
- GATT Article XVI.1: This obligates members to report to the Committee on Subsidies and Countervailing Duties about subsidies that have an adverse effect on international trade.
- GATT Article XVI.4 (Ban on Export Subsidies): This prohibits any form of subsidy, directly or indirectly received from governments, that allows industrial exports to be sold at a price cheaper than a comparable price of "like products" at domestic markets.

Similar to the requirements for anti-dumping actions, CVD can only be charged after a detailed

[39] Subsidies are widely used throughout the world as a tool for realizing government policies in such forms as grants (normal subsidies), tax exemptions, low-interest financing, investments and export credits.

investigation is carried out by the authority of the importing country. Accordingly, there are various provisions regarding the detailed rules, such as the following: a provision for deciding whether a product is being subsidized, a provision that gives criteria for determining whether subsidized imports are hurting domestic industry, a provision that indicates procedures for initiating and conducting investigations, and a provision on the implementation and duration (five years in general) of countervailing measures. On the other hand, the subsidized exporter can agree to raise its export prices in order to compensate for its low price, and avoid having its exports charged CVD.

Many countries handle countervailing measures and AD measures under a single law, apply similar process to deal with them, and give a single authority the responsibility for investigations. Accordingly, the two committees responsible for these issues occasionally hold joint meetings at the WTO. Besides their similarities, there are also fundamental differences (see Table II-6) regarding whose measures have been challenged: dumping is an action of a company, where as, with subsidies, it is the government or a government agency that acts. Since the WTO is an organization of countries and their governments, it is not possible for the AD Agreements to directly deal with companies, much less regulate companies' actions such as dumping. Therefore, there is a fundamental difference in the sense that in AD measures only one government acts (it reacts to dumping), whereas with subsidies, the governments on both sides can act; one subsidizes and the other can choose to counter that subsidy.

Table II-6.Comparisons between "Countervailing Measures" and "AD Measures"

	Countervailing Measures	AD Measures
Countermeasure	Imposition of import duties	Imposition of import duties
Exception to MFN Principle	Applied	Applied
Conditions of Imposition	Determination of injuries on the basis of detailed investigation	Determination of injuries on the basis of detailed investigation
Subjects of Countervailing Measures	Governments of the exporting countries	Companies of the exporting countries

Source: WTO "Trading into the Future" Chapter 2 *The Agreements*, Second edition, revised April 1999

<Subsidies Agreement>

- *Definition of subsidies* (Article 1)
- *Categories of subsidies* (Articles 2-9): Subsidies are divided into three categories according to specificity,* purpose and nature: (1) "red-light subsidies" that are prohibited outright; (2) "yellow-light subsidies" that are not prohibited but which may be subject to countervailing measures; and (3) "green-light subsidies" that are neither prohibited nor subject to countervailing measures (see Table II-7).

  **There is specificity* when legislation explicitly limits the availability of a subsidy to certain enterprises or industries. *There is no specificity* when there are objective criteria or conditions for

determining eligibility for, and the amount of, subsidies, and the subsidies are automatically granted to any and all who meet the eligibility requirements.

- *Countervailing measures* (Articles 10-23): Countervailing measures are used to offset the effect of a subsidy: in some cases a countervailing duty (limited to the amount of the subsidy) is levied on the imports of the subsidized goods; and in other cases commitments from the subsidizing country (that it will abolish or restrict the subsidy, or that exporters will raise prices) are obtained. These measures may be used to counter either red-light or yellow-light subsidies. Countervailing duties are subject to a "sunset clause"[40] and a "de minimis clause."[41]
- *Notification and surveillance* (Articles 25 and 26): These articles provide detail on WTO members' obligations to notify the Committee on Subsidies and Countervailing Measures of any specificity-type subsidies, and detail on the review by the committee.
- *Special and different treatment of developing country members* (Article 27): Considering the fact that subsidies may play an important role in the economic development of developing country members, this article provides for preferential measures with regard to red subsidies, remedies, dispute settlement, countervailing measures, and others (see Table II-7).
- *Transitional arrangements* (Articles 28 and 29): The WTO members are obliged to notify the Committee on Subsidies and Countervailing Measures about subsidies that are inconsistent with the Subsidies Agreement within 90 days after the date on which the Agreement takes effect. As well, they must bring those subsidies into conformity within three years of the date of entry into force of the WTO Agreement. These articles also provide for preferential treatment for those members in transition from centrally planned to market economies. In such causes the countries can be given up to seven years from the date of entry into force of the WTO Agreements to eliminate red-light subsidies (see Table II-8).

[40] Sunset clause: It stipulates the termination of the countervailing duty no later than five years after its imposition unless the investigating authorities find that injury from the subsidy continues or has the potential to recur (Article 21.3).

[41] De minimis clause (Article 11.9): It stipulates the termination of an investigation in such cases as where the total ad valorem subsidization of a product is less than one percent.

Table II-7.Categories of subsidies

<table>
<tr><td rowspan="2">Specific</td><td>Red-light subsidies

· Red-light subsidies that are prohibited
· Export subsidies and subsidies contingent upon the use of domestic over imported goods fall into the category.
· Red-light subsidies may be subject to countervailing measures (Articles 10-23).
· Red-light subsidies are deemed to be specific.
· Red-light subsidies may be subject to the remedies* for red-light subsidies (Article 4).</td></tr>
<tr><td>Yellow-light subsidies

· Yellow-light subsidies are not prohibited per se.
· Specific subsidies fall into the category of yellow-light subsidies (e.g. subsidies to cover recurring losses, direct debt relief, subsidies exceeding 5% of a product's price)
· Yellow-light subsidies may be subject to countervailing measures.
· Yellow-light subsidies may be subject to the remedies for yellow-light subsidies (Article 7).
(Specific Green-light Subsidies**)
· Subsidies which are specific but which meet certain conditions*** such as R&D subsidies, regional development subsidies, environmental conservation subsidies
· These subsidies are not subject to countervailing measures.
· These subsidies may be subject to the remedies for green-light subsidies (Article 9).</td></tr>
<tr><td>Non-specific</td><td>Green-light subsidies

· Green-light subsidies are not prohibited.
· Non-specific subsidies fall into the green-light subsidies.
· Green-light subsidies are not subject to countervailing measures.</td></tr>
</table>

Source: "Report on the Consistency of Trade Policies by Major Trading Partners," MITI, 2000.

* "Remedies" include referring the subsidy to consultations and the dispute settlement body, obtaining a panel report, adopting the report, and obtaining approval for retaliation.

** "Specific green-light subsidies" include research and development subsidies, regional development subsidies, and environmental conservation subsidies that meet "certain conditions" and that have been reported to the Committee before they take effect, all of which have been reviewed by the WTO Secretariat and approved by the Committee.

*** "Certain conditions" include the following: As for R&D subsidies, those for industrial research must cover no more than 75% of expenses, and those for pre-competitive development activities, no more than 50%. As for regional development subsidies, they should not have specificity within the region, and the region involved must have an unemployment rate that is at least 10% higher than the national average or income that is at least 15% lower. As for environmental conservation subsidies, they should be one-time only, and cover no more than 20% of expenses, etc.

Table II-8. Preferential measures and transitional arrangements of red-light subsidies

(General rules)

	Export subsidies	Subsidies contingent upon the use of domestic over imported goods
Least-developed country members	Not applied	Not applied for a period of 8 years from the date of entry into force of the WTO Agreement
Developing country members described in Annex VII (b)(GNP per capita less than U.S.$1,000)	Not applied	Not applied for a period of 5 years from the date of entry into force of the WTO Agreement
Other developing country members	Not applied for a period of 8 years from the date of entry into force of the WTO Agreement	Not applied for a period of 5 years from the date of entry into force of the WTO Agreement
Developed country members	Not applied for a period of 3 years from the date of entry into force of the WTO Agreement for the member	Not applied for a period of 3 years from the date of entry into force of the WTO Agreement for the member
Members Transitioning from centrally-planned to market economies	Not applied for a period of 7 years from the date of entry into force of the WTO Agreement	Not applied for a period of 7 years from the date of entry into force of the WTO Agreement

Source: "Report on the Consistency of Trade Policies by Major Trading Partners," MITI, 2000.

<Agreement on Agriculture>

The Agreement on Agriculture prescribes detailed rules concerning subsidies on agricultural products, such as domestic supports and subsidies on exports.

Domestic supports (Articles 6 and 7)

Domestic supports are divided into three categories described as "green," "blue" (neither subject to elimination) or "yellow" (subject to elimination). All policies not considered to be "green" are included in an Aggregate Measurement of Support (AMS),[42] and the developed WTO members are obliged to reduce the total by twenty percent over a period of six years. As for developing country members, the obligation is thirteen percent over a period of ten years.

The following are examples of policies that are considered "green" as long as certain conditions are met: (1) research, promotion, inspection, and other general services; (2) public stockholding for food security purposes; (3) income insurance and safety-net programs; and (4) payment under environmental programs.

The blue category includes direct payments under production restriction plans as long as the following

[42] AMS (Aggregate Measurement of Support): The AMS expresses the extent of protection given to agricultural products. It represents the amount of market price support, non-exempt direct payments, or any other subsidies not exempted from the reduction commitment provided by a given country. For individual items, the extent of protection is calculated based on the specific guidelines given under the AMS, and for those non-item-specific supports, it is calculated based on aggregate monetary amounts. Measurements are based on the period 1986-1988 (Chapter 5-2, "Overview of the Agricultural Agreement" from "The Expanded GATT and the Uruguay Round;" Takase Tamotsu, ed. Toyo Keizai Shinpo-sha, 1995.

conditions are met: (1) payments are based on fixed area and yield (subsidy payments for idle fields); (2) payments are made on eighty-five percent or less of the base level of production; and (3) livestock payments are made on a fixed number of head.

Export competition (Articles 8 to 11)

These articles provide that, over a period of six years, direct export subsidies are to be reduced by thirty-six percent and the volume of subsidized exports by twenty-one percent. Developing country members are required to cut down fiscal spending by twenty-four percent, and items subject to government subsidies by fourteen percent (measured based on the same period).[43] At the same time, each member is obliged not to provide export subsidies other than those in conformity with the Agreement and with the commitments as specified in each Member's Schedule.

5.2.2.3 Safeguards (Emergency import restrictions)

Overview of the rule

WTO members are allowed to take emergency measures to restrict imports (so-called safeguard measures) to prevent a sudden surge of imports from causing injury to domestic industry. Details of the rule are provided under GATT Article XIX, concerning safeguards measures, and the Agreement on Safeguards.

- GATT Article XIX permits members to use safeguard measures, which are emergency import restrictions, so as to counteract sharp increases in imports only if the following conditions are met: application is non-discriminate and there is either provision of compensation or acceptance of countermeasures. Due to these conditions, however, safeguard measures were infrequently used, and this led some governments to protect their domestic industries by requesting exporting countries to restrain exports "voluntarily" or by other "grey-area" measures.
- The Agreement on Safeguards explicitly provides that safeguard measures are permitted only when certain conditions are met (details of which are listed in Table II-9). It also prohibits grey-area measures outside the auspices of the GATT such as introduction and maintenance of voluntary export restrictions, orderly marketing arrangements, and similar measures, including export moderation; export or import price monitoring; export or import surveillance; compulsory import cartels; and trade-restrictive, discretionary export or import licensing schemes.

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[43] Chapter 5-2, "Overview of the Agricultural Agreement" from "The Expanded GATT and the Uruguay Round"; Takase Tamotsu, Ed. (Toyo Keizai Shinpo-sha, 1995)

Table II-9.Conditions for imposing safeguards

Determination of injury	All relevant economic factors (such as imports, production, sales, productivity) must be considered, and a causal relationship between increase in import and injury must be demonstrated (Article 4 of the Agreement on Safeguards).
Investigation procedures	Investigation procedures must be specified prior to investigations and all interested parties must be given an opportunity to present evidence. As well, the findings of the investigation must be published (Article 3).
Duration	Four years initially, duration may be extended to the maximum of eight years (Articles 7.1 and 7.3).
Levels of quantitative restrictions	In principle, there must not fall below the average of imports in the last three representative years (Article 5).
Prohibition of reintroduction	Measures may not be invoked again for a period equivalent to the period of the duration of a preceding measure or the maximum of two years (Article 7.5).
Progressive liberalization	Where the duration of a safeguard measure exceeds one year, the member applying the measure is obliged to gradually liberalize the measure. Where the duration of the measure exceeds three years, the member applying the measure is obliged to conduct a mid-term review of the measure (Article 7.4).

Source: "Report on the Consistency of Trade Policies by Major Trading Partners," MITI, 2000

Note that the Agreement on Safeguards has relaxed the conditions on invocation to some extent, recognizing the fact that strict requirements provided for in GATT Article XIX were partly responsible for the prevalence of "gray-area" measures. The following two aspects of the conditions on invocation were relaxed:

- Special Method for Allocating Import Quotas (so-called Quota Modulation) for Export Countries: GATT Article XIII requires, in principle, that these allocations must be based on actual imports during the representative period of the past. Where imports from a specific country, have increased disproportionately quickly, however, the imposition of safeguards would negatively affect third countries from which there is no sudden increase in imports. In such a case, therefore, the application of these quotas might be derogated and replaced by safeguards that can be targeted at imports from a particular company for the maximum of four years.
- Restrictions on Countermeasures: This provides that exporting countries may not invoke retaliatory measures* for the first three years of the safeguard measures if such measures are taken consistent with the Agreement on Safeguards.

  *Retaliatory measures: When invoking import restriction under the safeguard provisions, an importing country is required to provide some sort of compensation to exporting countries, usually in the form of a tariff reduction on other items. The provision of compensation, however, is often politically sensitive, since it may provoke conflicts between the interests of different industries in the importing country. Therefore, in such cases where compensation cannot be provided, the importing country must accept retaliatory measures that may be taken by exporting countries.

Note that there are also safeguard provisions under the Agreement on Textiles and Clothing, and the Agreement on Agriculture.

Exceptions provided for developing countries

An importing country can only apply a safeguard measure to a product from a developing country in the following cases:

(1) If the developing country is supplying more than three percent of the imports of that product.

(2) In cases where developing country members, each with less than three percent of the import share, collectively account for more than nine percent of total imports of the product concerned.

Economic and political implications

Safeguard measures are meant to shelter the products of importing countries from a surge of imports, and thus avoid serious injury to domestic production. At the same time they can work as safety valves when a sudden increase of imports is likely to cause political and economic problems. This is important in the sense that the availability of safeguard measures as safety valves has enabled WTO members to positively implement measures on trade liberalization in conformity with the WTO Agreements.

5.3 Agreements involving non-merchandise trade (Agreements on services and intellectual property rights)

5.3.1 General Agreement on Trade in Services (GATS)

Overview of rules

"Trade in Services" refers to international transactions involving such fields as financial services, transport, communications, construction, and distribution. As trade in services increased steadily, the General Agreement on Trade in Services (GATS) was enacted so as to promote liberalization of trade in services by preventing domestic regulations governing their supply and consumption from becoming barriers to trade in services. Detailed rules are provided under the GATS as well as in its annexes.

The GATS consists of twenty-nine articles that cover all services sectors, and it requires that all WTO members apply the following general obligations:

① Obligations Regarding Trade in Services in all Service Sectors:

- **Most-favored-nation treatment (Article II)**: Under GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all other WTO members. However, when GATS came into force, a number of countries already had preferential agreements in services that they had signed with trading partners, either bilaterally or

in small groups. Each member country, therefore, is allowed to continue giving such favorable treatment to particular countries by listing "MFN Exemptions" as a transitional arrangement. In order to protect the general MFN principle, the exceptions are permitted only once, and should last no more than ten years.

- **Transparency (Article III)**: This obligates the member governments to publish all relevant laws and regulations in order to eliminate lack of transparency in such areas that may constitute a barrier to trade in services.

② Obligations Regarding Trade in Services in Sectors where Specific Commitments Have Been Undertaken:

- **Domestic regulations** (Article VI): All the legal measures taken by governments that affect trade in services should be administered in a reasonable, objective, and impartial manner.
- **Payments and transfers** (Article XI): Members should not restrict international payments and transfers for current transactions.

③ Obligations Depending on the Content of Specific Commitments:

- **Market access** (Article XVI): This provides that governments should refrain from applying the following six measures: (a) limitations on the number of service suppliers; (b) limitations on the total value of service transactions or assets; (c) limitations on total output; (d) limitations on the total numbers of natural persons that may be employed; (e) measures which restrict the types of legal entity through which a service is provided; and (f) limitations on the participation of foreign capital. Since market access is one of the obligations whose terms and conditions are determined through specific commitments, members can maintain some or all of these restrictions, which are required then to be specified in the Schedule of Commitments.
- **National treatment** (Article XVII): Members can decide whether to undertake national treatment commitments in each sector through negotiations. Members are permitted to make reservations. For example, in undertaking a national treatment commitment in the banking sector, a member can promise national treatment in all sectors of banking except deposit operations. Any such reservation must be specified in the Schedule of Commitments.

GATS Article XIX provides that members are obliged to start successive rounds of negotiations aimed at achieving progressive liberalization of trade in services no later than five years from the date of entry into force of the WTO Agreements and hold them periodically thereafter.

The following is the list of Annexes to the Agreement on Trade in Services:

① **Annex on financial services**: This provides that nothing in the GATS prevents a member country from taking measures for prudential reasons and to ensure the integrity and stability of its financial

system.

② **Annex on telecommunications**: This prescribes that members shall ensure that any service supplier of any other member is accorded access to and use of public telecommunications networks and services on reasonable and non-discriminatory terms and conditions, for the supply of a service included in its schedule.

③ **Annex on air transport services**: This provides that the GATS shall not apply to measures affecting a member's traffic rights, or services directly related to the exercise of those rights, as recognized under existing bilateral agreements. GATS rules, however, shall apply to measures affecting trade in air transport services (such as marketing and computer booking services) and ancillary services (such as aircraft repairs and maintenance services).

④ **Annex on movement of natural persons supplying services under the GATS**: This prescribes that the GATS shall not prevent a member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any member under the terms of a specific commitment regarding market access, national treatment, and others.

It is important to note that most services such as financial services, transport and shipping, communications, distribution, construction, and energy are inputs to other industries. Increased efficiency and rationalization efforts in a certain service sector, therefore, may not only benefit the service sector itself, but also have a positive spillover effect in other service and manufacturing sectors. Keeping this in mind, one can conclude that although the liberalization of trade in services may result in a short-term selection of some inefficient service providers, in the long term it will lead greater economic efficiency. Thus, even in areas where regulations are required, liberalization steps must be taken to ensure transparency, procedural fairness, and fair competitive conditions.

5.3.2 Protection of intellectual property

Overview of Rules

Trade-distorting effect of insufficient and inappropriate protection of intellectual property are becoming a major concern as the volume of trade in goods and services involving intellectual property have increased greatly in recent years. Accordingly, the WTO, in order to bring greater order to international trade, requests its member countries to adjust domestic standards in conformance to the international standard established in the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement (see Table II-10 for the details of the Agreement).

- *Insufficient protection of intellectual property*: Inadequate protection of intellectual property leads

to trademark counterfeiting; copyright piracy of pictures, music and other works; design imitation; as well as the manufacture and distribution of products that infringe on intellectual property rights. This reduces the incentives and allocation of resources for new product development, and, furthermore, prevents property owners from exercising their legitimate property rights. Inadequate protection impedes and impairs investment and technology transfers from other countries and, accordingly, reduces domestic technological development and adversely affects the world economy as a whole.

- *Inappropriate protection of intellectual property*: In cases of excessive intellectual property protection or protection causing discrimination against foreign interests, or in cases where the property rights system varies widely from internationally generally agreed-upon rules and procedures, extra time and money must be spent in acquisition and enforcement of the property rights, which in turn distorts free trade.

One has to keep in mind that by allowing a certain amount of monopolistic use of new technology and knowledge, intellectual property rights systems restrain use by third parties and competition, and therefore reduce the social benefits to consumers by limiting the industrial application of technology and knowledge. Furthermore, international redistribution of income from developing countries to developed countries will occur when developing countries use intellectual property created by the developed countries. Thus, in designing an intellectual property rights system, consideration must be given to assure fair and free competition.

Table II-10. Outline of the TRIPs Agreement

Scope of coverage	All legally recognized intellectual property rights
Relation to existing conventions	The TRIPs Agreement incorporates and improves upon protection levels of the Paris Convention (industrial property rights) and the Berne Convention (copyright).
Basic principles	National treatment (GATT Article III) and MFN treatment (GATT Article IV), etc.
Levels of protection (Standards)	· Copyrights: The Agreement specifies the protection of computer programs and rental rights. · Patents: It establishes a wide definition of patentable subject matter (including pharmaceutical products and foods), and requires members to introduce patent protection for products. · Duration: Protection shall be afforded for at least twenty years from the filing date of the application. (It also stipulates strict conditions on authorization of compulsory license.) · Geographical indication: It obligates signatories to provide the legal means to prevent unlawful geographical indication on products. · Other provisions: It contains provisions governing the protection of trademarks, industrial designs, layout-designs of integrated circuits, and undisclosed information.
Enforcement	It requires domestic procedures for enforcement to be fair and equitable. It provides for enforcement through the civil judicial process; through administrative procedures, including border measures and administrative remedies; and through the criminal judicial process.

Source: "Report on the Consistency of Trade Policies by Major Trading Partners," MITI, 2000

- **Exceptions to the rule:**

Under the TRIPs Agreement, developing countries and least-developed countries are given transitional arrangements and they are exempted from the application of all the rules, excluding national treatment and MFN treatment, for a certain number of years. Developing countries and transitioning countries have a transition period of five years from the date of entry into force of the WTO Agreement (i.e., until January 2000); and least-developed countries have eleven years (i.e., until January 2006) (Articles 65 and 66).

In addition, the TRIPs Agreement provides that in order to help developing countries in meeting the obligation of the Agreement, it is necessary for developed countries to provide technical and financial cooperation (Article 67). And for this very purpose, information regarding technical and financial cooperation has been already presented and circulated by fourteen developed countries and seven international organizations, including the World Customs Organization (WCO), to developing countries. As well, the WTO and the World Intellectual Property Organization (WIPO) notified developing countries that they are prepared to provide technical cooperation so as to enable the implementation of the Agreement by the year 2000.

Now that the transition period for developing countries has expired, a review of each country's laws and ordinances is scheduled to take place in 2000 and 2001. As for the new members, the legislation review will be conducted in order of accession.

5.4 Agreements regarding transparency in trade procedures (TRIMs, TBT, etc.)

There are various agreements that regulate technical aspects of trade-related administrative procedures of member countries. Examples of such agreements are listed below:

① Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)
② Agreement on Import licensing
③ Agreement on Technical Barriers to Trade (TBT)
④ Customs Valuation Methods Agreement
⑤ Agreement on Preshipment Inspection (PSI)
⑥ Agreement on Rules of Origin
⑦ Trade-Related Investment Measures (TRIMs)

These agreements consist of rules that concern purely technical aspects of the administrative procedures of each country, and therefore should be neutral to trade measures as long as they are implemented properly. However, having different standards, depending on the country, as well as arbitrary formulation and administration of the rules in an attempt to achieve protectionist policy objectives, could restrict the scope of

international trade. Therefore, it is especially important to create common international standards in these areas of trade-related administrative procedures.

5.4.1 Standards and conformity assessment systems

Overview of the rules

Standards and conformity assessment systems exist to specify technical regulations, standards, and rules for judging whether products conform to those particular standards in order to serve a variety of purposes, such as ensuring the quality of products, ensuring public safety, and protecting the environment. In practice, when used too strictly or enforced arbitrarily, standards and conformity assessment systems sometimes have restrictive effect on trade. For example, there are cases in which standards and conformity assessment systems are designed and enforced in a manner that restricts foreign goods: limiting imports or subjecting them to discriminatory treatment.

Detailed rules are provided under the Agreement on Technical Barriers to Trade (TBT) Agreement and the Agreement on the Application of Sanity and Phytosanitary Measures (SPS) Agreement.

TBT Agreement

In order to eliminate trade barriers caused by standards that vary among countries, the TBT Agreement directs standardizing bodies to design their standards and conformity assessment procedures based on international standards, and to ensure national treatment and MFN treatment in applying the procedures to foreign goods. In emphasizing the importance of transparency, the TBT Agreement obligates WTO members to notify other members through the WTO Secretariat if they introduce new standards and conformity assessment procedures or change existing procedures.

SPS Agreement

Sanitary and phytosanitary measures are applied to prevent the entry of diseases and pests from abroad, so when taking into account their prevalence in exporting countries and importing countries and other relevant factors, based on scientific and technical ground, there will naturally be differences among countries. Therefore, the SPS Agreement seeks to prevent the use of sanitary and phytosanitary measures as disguised trade restrictions, and to harmonize national sanitary and phytosanitary measures based on international standards.

In cases where a relevant international standard does not exist and one member's new standards or conformity assessment systems have a significant effect on the trade of other members, both the TBT Agreement and the SPS Agreement obligate that member to notify others through the WTO Secretariat and allow reasonable time (usually sixty days) for other members to make comments.

5.4.2 Import licensing procedures

Overview of rules

The Agreement on Import Licensing Procedures requires import licensing to be simple, transparent and predictable. Accordingly, it obligates governments to publish sufficient information for traders to know how and why the licenses are granted. In addition, members are obliged to notify the WTO when they introduce new import licensing procedures or change existing procedures.

The Agreement also gives guidelines as to how government should assess applications for licenses, which is intended to prevent the administrative work itself from restricting imports and distorting trade. In addition, the Agreement says that the agencies handling licensing should not take more than thirty days to deal with an application (sixty days when all applications are considered at the same time).

5.4.3 Agreement on customs valuation

Overview of rules

The WTO Agreements aim for a system for the valuation of goods for customs purposes that is fair, neutral, and uniform. When countries assign arbitrary values for tariff purposes, they render tariff rates meaningless, which may have a trade-distorting effect. Therefore, GATT Article VII and the "Agreement on Implementation of Article VII" (Customs Valuation Agreement) define international rules for valuation,[44] and forbid the use of arbitrary or fictitious customs values—in order to establish fair, neutral, and uniform customs valuation systems. Under Article 20 of the Customs Valuation Agreement, developing countries are allowed to postpone the application of the rules in the Agreement for a particular period of time if other members approve. About forty members have applied for this postponement as of January 2000.

5.4.4 Agreement on preshipment inspection

Overview of rules

Preshipment inspection is an act of checking details (such as price, quantity and quality) of goods ordered overseas by specialized private companies on commission. Governments of developing countries, in general, utilize the system in order to compensate for inadequacies in administrative infrastructures and to safeguard national financial interests (such as prevention of capital flight, commercial fraud, and

[44] The Customs Valuation Agreement states that "the primary basis for customs value under this Agreement is 'transaction value' as defined in Article 1...together with the adjustments stated in Article 8". Therefore, it is "the price actually paid" that is used as the basis for customs valuation. In exceptional cases, transaction prices of similar goods can be used.

customs duty evasion). Considering this, the Agreement on Preshipment Inspection obligates those governments which use preshipment inspections to ensure non-discrimination, transparency, and protection of confidential business information; to avoid unreasonable delay; to use specific guidelines for conducting price verification; and to avoid conflicts of interest by the inspection agencies. Exporting countries that use preshipment inspection are obliged to ensure non-discrimination in the application of domestic laws and regulations, prompt publication of those laws and regulations and the provision of technical assistance where requested.

5.4.5 Agreement on rules of origin

Overview of rules

Rules of origin, used to determine the "nationality" of goods traded in international commerce, are divided into the following two categories:

- *Rules relating to preferential treatment*: Rules on general preferential treatment for developing countries as well as those relating to regional trade agreements
- *Rules relating to non-preferential treatment*: Rules on MFN treatment; anti-dumping and countervailing duties; marking requirements under GATT Article IX ("marks of origin"); and government procurement.

Rules of origin are important in the sense that they determine the tariffs to be imposed on specific goods and whether trade restrictive measures (such as quotas for imports/exports, preferential tariffs, AD tariffs, countervailing tariffs on subsidized imports, etc.) may be applied to imported goods. In addition, a country's rules of origin, if manipulated, can substantially affect direct investment, parts procurement, and other business activities of companies seeking to establish origin in that country. Therefore, if rules of origin differ greatly from one country to another, they may distort the flow of trade and investment. Yet, there are no internationally agreed upon rules of origin. Therefore, to remedy the trade problems this has caused, members are now in the process of formulating harmonized non-preferential rules of origin under the terms outlined in the Agreement on Rules of Origin.

Rules of origin, if properly formulated and applied, should have a neutral effect on trade. However, if arbitrarily formulated and applied in a country so as to expand hidden restrictive trade measures, they will increase the likelihood of trade distortion.

5.4.6 TRIMs Agreement

WTO member countries are not allowed to apply trade-related investment measures that violate either

GATT Article III (national treatment) or GATT Article XI (general elimination of quantitative restrictions), even for the purpose of protecting and fostering domestic industries and preventing the outflow of foreign exchange reserves. The Agreement on Trade-Related Investment Measures (hereinafter the "TRIMs Agreement") was enacted to provide the rules concerning the issue. In particular, the TRIMs Agreement explicitly forbids measures such as local content requirements, trade balancing requirements, foreign exchange restrictions, and export performance requirements (domestic sales requirements):

- *Local content requirements*: Measures requiring the purchase or use by a foreign enterprise of domestic products (violation of GATT Article III: 4)
- *Trade balancing requirements*: (1) Measures requiring that a foreign enterprise's purchases or use of imported products be limited to an amount related to the volume or value of local products that it exports (violation of GATT Article III: 4); (2) measures restricting the importation by a going enterprise of products used in or related to its local production, generally or to an amount related to the volume or value of local production that it exports (violation of GATT Article XI: 1)
- *Foreign exchange restrictions*: Measures restricting the importation by a foreign enterprise of products (parts and other goods) used in or related to its local production by restricting its access to foreign exchange to an amount related to the foreign exchange inflows attributable to the enterprise (violation of GATT Article XI: 1)
- *Export restrictions*: Measures restricting the exportation or sale for export by a foreign enterprise of its products (violation of GATT Article XI: 1)

Measures specifically prohibited by the TRIMs Agreement should be notified to the WTO within ninety days after the entry into force of the WTO Agreements. At the same time, these measures should be eliminated within a certain transition period.[45] Most of the TRIMs notified by the member countries so far are local content requirements in the automotive and agricultural sectors (see Table II-11). Since the transition period for the elimination of TRIMs that were initially granted to developing countries expired on January 1, 2000, countries such as the Philippines, Columbia, Mexico, Romania, Pakistan, Argentina, Malaysia and Chile have requested extensions, mostly in the automobile sector.

It is considered that TRIMs, in the long run, may retard economic development and weaken the economies of the countries that impose them by impeding the free flow of investment. In the short run, however, TRIMs provide a way to protect and foster domestic industry, and help, to a certain extent, to improve the country's infrastructure that is necessary for its industrial development. These perceived benefits, therefore, account for their frequent use in developing countries.

[45] Developed countries have a period of two years in which to abolish such measures; and in principle, developing countries and economies in transition to the market economy will have five years and least-developed countries will have seven years.

Exceptions to the rule

The TRIMs Agreement contains rule exceptions in the following provisions:

- *Exceptions for developing countries*: This permits developing countries to retain TRIMs, which is in conflict with GATT Articles III and XI, provided that measures meet the conditions of GATT Article XVIII, which allows specified derogation from the GATT provisions by virtue of the economic development needs of developing countries.
- *Equitable provisions*: In order to avoid damaging the competitiveness of companies already subject to TRIMs, governments are allowed to apply the same TRIMs to new foreign direct investment during the transitional period.

Table II-11. Areas of TRIMs notification

	Local content	Trade balancing	Foreign exchange balancing	Export restrictions
Argentina	●	●		
Bolivia				△
Barbados	◇			
Chile	●	●		
Colombia	○ ◆	○ ◆		
Costa Rica	△			
Cuba	○ △			
Cyprus	◇			
Dominica Republic	△	◇ △		
Ecuador	○			
Indonesia	○ ◇ △			
India	△			○ ◇ △
Mexico	●			
Malaysia	●			
Pakistan	● △			
Peru	◇			
Philippines	●		●	
Romania	● ▲			
Thailand	○ ◇ △			
Uganda	△	△		
Uruguay			○	
Venezuela	○			
South Africa	○ ◇ △			

Source: Report on the Consistency of Trade Policies by Major Trading Partners," MITI, 2000

Notes: 1) TRIMs for which no extension requests were filed: ○Automotive ◇Agricultural △Other

2) TRIMs for which extension requests were filed: ●Automotive ◆Agricultural ▲Other

3) Egypt and Nigeria both notified the WTO of intentions to extend TRIMs, but are excluded from this list since the nature and coverage of their requests are unknown.