

The WTO is 'rules-based'; its rules are negotiated agreements

1. Overview: a navigational guide

The WTO agreements cover goods, services and intellectual property. They spell out the principles of liberalization, and the permitted exceptions. They include individual countries' commitments to lower customs tariffs and other trade barriers, and to open and keep open services markets. They set procedures for settling disputes. They prescribe special treatment for developing countries. They require governments to make their trade policies transparent by notifying the WTO about laws in force and measures adopted, and through regular reports by the secretariat on countries' trade policies.

These agreements are often called the WTO's trade rules, and the WTO is often described as "rules-based", a system based on rules. But it's important to remember that the rules are actually agreements that governments negotiated.

This chapter focuses on the Uruguay Round agreements, which are the basis of the present WTO system. Additional work is also now underway in the WTO. This is the result of decisions taken at Ministerial Conferences, in particular the meeting in Doha, November 2001, when new negotiations and other work were launched. (More on the Doha Agenda, later.)

Six-part broad outline

The table of contents of "The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts" is a daunting list of about 60 agreements, annexes, decisions and understandings. In fact, the agreements fall into a simple structure with six main parts: an umbrella agreement (the Agreement Establishing the WTO); agreements for each of the three broad areas of trade that the WTO covers (goods, services and intellectual property); dispute settlement; and reviews of governments' trade policies.

The agreements for the two largest areas — goods and services — share a common three-part outline, even though the detail is sometimes quite different.

- They start with **broad principles**: the General Agreement on Tariffs and trade (GATT) (for goods), and the General Agreement on Trade in Services (GATS) (The third area, Trade-Related Aspects of Intellectual Property Rights (TRIPS), also falls into this category although at present it has no additional parts.)
- Then come **extra agreements and annexes** dealing with the special requirements of specific sectors or issues.
- Finally, there are the detailed and lengthy **schedules (or lists) of commitments** made by individual countries allowing specific foreign products or service-providers access to their markets. For GATT, these take the form of binding commitments on tariffs for goods in general, and combinations of tariffs and quotas for some agricultural goods. For GATS, the commitments state how much access foreign service providers are allowed for specific sectors, and they include lists of types of services where individual countries say they are not applying the "most-favoured-nation" principle of non-discrimination.

The 'additional details'

These agreements and annexes deal with the following specific sectors or issues:

For **goods** (under GATT)

- Agriculture
- Health regulations for farm products (SPS)
- Textiles and clothing
- Product standards (TBT)
- Investment measures
- Anti-dumping measures
- Customs valuation methods
- Preshipment inspection
- Rules of origin
- Import licensing
- Subsidies and counter-measures
- Safeguards

For **services** (the GATS annexes)

- Movement of natural persons
- Air transport
- Financial services
- Shipping
- Telecommunications

Underpinning these are dispute settlement, which is based on the agreements and commitments, and trade policy reviews, an exercise in transparency.

Much of the Uruguay Round dealt with the first two parts: general principles and principles for specific sectors. At the same time, market access negotiations were possible for industrial goods. Once the principles had been worked out, negotiations could proceed on the commitments for sectors such as agriculture and services.

Additional agreements

Another group of agreements not included in the diagram is also important: the two “plurilateral” agreements not signed by all members: civil aircraft and government procurement.

Further changes on the horizon, the Doha Agenda

These agreements are not static; they are renegotiated from time to time and new agreements can be added to the package. Many are now being negotiated under the Doha Development Agenda, launched by WTO trade ministers in Doha, Qatar, in November 2001.

In a nutshell			
The basic structure of the WTO agreements: how the six main areas fit together — the umbrella WTO Agreement, goods, services, intellectual property, disputes and trade policy reviews.			
<i>Umbrella</i>	AGREEMENT ESTABLISHING WTO		
	Goods	Services	Intellectual property
<i>Basic principles</i>	GATT	GATS	TRIPS
<i>Additional details</i>	Other goods agreements and annexes	Services annexes	
<i>Market access commitments</i>	Countries' schedules of commitments	Countries' schedules of commitments (and MFN exemptions)	
<i>Dispute settlement</i>	DISPUTE SETTLEMENT		
<i>Transparency</i>	TRADE POLICY REVIEWS		

2. Tariffs: more bindings and closer to zero

The bulkiest results of Uruguay Round are the 22,500 pages listing individual countries' commitments on specific categories of goods and services. These include commitments to cut and "bind" their customs duty rates on imports of goods. In some cases, tariffs are being cut to zero. There is also a significant increase in the number of "bound" tariffs — duty rates that are committed in the WTO and are difficult to raise.



ON THE WEBSITE:

www.wto.org > trade topics > goods > goods schedules

www.wto.org > trade topics > services > services schedules

Tariff cuts

Developed countries' tariff cuts were for the most part phased in over five years from 1 January 1995. The result is a 40% cut in their tariffs on industrial products, from an average of 6.3% to 3.8%. The value of imported industrial products that receive duty-free treatment in developed countries will jump from 20% to 44%.

There will also be fewer products charged high duty rates. The proportion of imports into developed countries from all sources facing tariffs rates of more than 15% will decline from 7% to 5%. The proportion of developing country exports facing tariffs above 15% in industrial countries will fall from 9% to 5%.

The Uruguay Round package has been improved. On 26 March 1997, 40 countries accounting for more than 92% of world trade in information technology products, agreed to eliminate import duties and other charges on these products by 2000 (by 2005 in a handful of cases). As with other tariff commitments, each participating country is applying its commitments equally to exports from all WTO members (i.e. on a most-favoured-nation basis), even from members that did not make commitments.



What is this agreement called? There is no legally binding agreement that sets out the targets for tariff reductions (e.g. by what percentage they were to be cut as a result of the Uruguay Round).

Instead, individual countries listed their commitments in schedules annexed to Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994. This is the legally binding agreement for the reduced tariff rates. Since then, additional commitments were made under the 1997 Information Technology Agreement.

More bindings

Developed countries increased the number of imports whose tariff rates are "bound" (committed and difficult to increase) from 78% of product lines to 99%. For developing countries, the increase was considerable: from 21% to 73%. Economies in transition from central planning increased their bindings from 73% to 98%. This all means a substantially higher degree of market security for traders and investors.

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Binding' tariffs

The market access schedules are not simply announcements of tariff rates. They represent commitments not to increase tariffs above the listed rates — the rates are "bound". For developed countries, the bound rates are generally the rates actually charged. Most developing countries have bound the rates somewhat higher than the actual rates charged, so the bound rates serve as ceilings.

Countries can break a commitment (i.e. raise a tariff above the bound rate), but only with difficulty. To do so they have to negotiate with the countries most concerned and that could result in compensation for trading partners' loss of trade.

> See also **Doha Agenda negotiations**

And agriculture ...

Tariffs on all agricultural products are now bound. Almost all import restrictions that did not take the form of tariffs, such as quotas, have been converted to tariffs — a process known as “tariffication”. This has made markets substantially more predictable for agriculture. Previously more than 30% of agricultural produce had faced quotas or import restrictions. The first step in “tariffication” was to replace these restrictions with tariffs that represented about the same level of protection. Then, over six years from 1995–2000, these tariffs were gradually reduced (the reduction period for developing countries ends in 2005). The market access commitments on agriculture also eliminate previous import bans on certain products. In addition, the lists include countries’ commitments to reduce domestic support and export subsidies for agricultural products. (See section on agriculture.)

> See also **Doha Agenda** chapter

3. Agriculture: fairer markets for farmers

The original GATT did apply to agricultural trade, but it contained loopholes. For example, it allowed countries to use some non-tariff measures such as import quotas, and to subsidize. Agricultural trade became highly distorted, especially with the use of export subsidies which would not normally have been allowed for industrial products. The Uruguay Round produced the first multilateral agreement dedicated to the sector. It was a significant first step towards order, fair competition and a less distorted sector. It was implemented over a six-year period (and is still being implemented by developing countries under their 10-year period), that began in 1995. The Uruguay Round agreement included a commitment to continue the reform through new negotiations. These were launched in 2000, as required by the Agriculture Agreement.

> See also **Doha Agenda negotiations**

What is ‘distortion’?

This is a key issue. Trade is distorted if prices are higher or lower than normal, and if quantities produced, bought, and sold are also higher or lower than normal — i.e. than the levels that would usually exist in a competitive market.

For example, import barriers and domestic subsidies can make crops more expensive on a country’s internal market. The higher prices can encourage over-production. If the surplus is to be sold on world markets, where prices are lower, then export subsidies are needed. As a result, the subsidizing countries can be producing and exporting considerably more than they normally would.

Governments usually give three reasons for supporting and protecting their farmers, even if this distorts agricultural trade:

- to make sure that enough food is produced to meet the country’s needs
- to shield farmers from the effects of the weather and swings in world prices
- to preserve rural society.

But the policies have often been expensive, and they have created gluts leading to export subsidy wars. Countries with less money for subsidies have suffered. The debate in the negotiations is whether these objectives can be met without distorting trade.



The Agriculture Agreement: new rules and commitments

The objective of the **Agriculture Agreement** is to reform trade in the sector and to make policies more market-oriented. This would improve predictability and security for importing and exporting countries alike.

The new rules and commitments apply to:

- **market access** — various trade restrictions confronting imports
- **domestic support** — subsidies and other programmes, including those that raise or guarantee farmgate prices and farmers' incomes
- **export subsidies** and other methods used to make exports artificially competitive.

The agreement does allow governments to support their rural economies, but preferably through policies that cause less distortion to trade. It also allows some flexibility in the way commitments are implemented. Developing countries do not have to cut their subsidies or lower their tariffs as much as developed countries, and they are given extra time to complete their obligations. Least-developed countries don't have to do this at all. Special provisions deal with the interests of countries that rely on imports for their food supplies, and the concerns of least-developed economies.

“Peace” provisions within the agreement aim to reduce the likelihood of disputes or challenges on agricultural subsidies over a period of nine years, until the end of 2003.



What is this agreement called? Most provisions: Agreement on Agriculture.

Commitments on tariffs, tariff quotas, domestic supports, export subsidies: in schedules annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994.

Also: [Ministerial] Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries.

(See also: “Modalities for the establishment of specific binding commitments under the reform programme”, MTN.GNG/MA/W/24.)

Market access: ‘tariffs only’, please

The new rule for market access in agricultural products is “tariffs only”. Before the Uruguay Round, some agricultural imports were restricted by quotas and other non-tariff measures. These have been replaced by tariffs that provide more-or-less equivalent levels of protection — if the previous policy meant domestic prices were 75% higher than world prices, then the new tariff could be around 75%. (Converting the quotas and other types of measures to tariffs in this way was called “tariffication”.)

The tariffication package contained more. It ensured that quantities imported before the agreement took effect could continue to be imported, and it guaranteed that some new quantities were charged duty rates that were not prohibitive. This was achieved by a system of “tariff-quotas” — lower tariff rates for specified quantities, higher (sometimes much higher) rates for quantities that exceed the quota.

The newly committed tariffs and tariff quotas, covering all agricultural products, took effect in 1995. Uruguay Round participants agreed that developed countries would cut the tariffs (the higher out-of-quota rates in the case of tariff-quotas) by an average of 36%, in equal steps over six years. Developing countries would make 24% cuts over 10 years. Several developing countries also used the option of offering ceiling tariff rates in cases where duties were not “bound” (i.e. committed under GATT or WTO regulations) before the Uruguay Round. Least-developed countries do not have to cut their tariffs. (These figures do not actually appear in the Agriculture

Numerical targets for agriculture

The reductions in agricultural subsidies and protection agreed in the Uruguay Round. Only the figures for cutting export subsidies appear in the agreement.

	Developed countries 6 years: 1995–2000	Developing countries 10 years: 1995–2004
Tariffs		
average cut for all agricultural products	–36%	–24%
minimum cut per product	–15%	–10%
Domestic support		
total AMS cuts for sector (base period: 1986–88)	–20%	–13%
Exports		
value of subsidies	–36%	–24%
subsidized quantities (base period: 1986–90)	–21%	–14%

Least-developed countries do not have to make commitments to reduce tariffs or subsidies.

The base level for tariff cuts was the bound rate before 1 January 1995; or, for unbound tariffs, the actual rate charged in September 1986 when the Uruguay Round began.

The other figures were targets used to calculate countries' legally-binding "schedules" of commitments.

Agreement. Participants used them to prepare their schedules — i.e. lists of commitments. It is the commitments listed in the schedules that are legally binding.)

For products whose non-tariff restrictions have been converted to tariffs, governments are allowed to take special emergency actions ("special safeguards") in order to prevent swiftly falling prices or surges in imports from hurting their farmers. But the agreement specifies when and how those emergency actions can be introduced (for example, they cannot be used on imports within a tariff-quota).

Four countries used "special treatment" provisions to restrict imports of particularly sensitive products (mainly rice) during the implementation period (to 2000 for developed countries, to 2004 for developing nations), but subject to strictly defined conditions, including minimum access for overseas suppliers. The four were: Japan, Rep. of Korea, and the Philippines for rice; and Israel for sheepmeat, wholemilk powder and certain cheeses. Japan and Israel have now given up this right, but Rep. of Korea and the Philippines have extended their special treatment for rice. A new member, Chinese Taipei, gave special treatment to rice in its first year of membership, 2002.

Domestic support: some you can, some you can't

The main complaint about policies which support domestic prices, or subsidize production in some other way, is that they encourage over-production. This squeezes out imports or leads to export subsidies and low-priced dumping on world markets. The Agriculture Agreement distinguishes between support programmes that stimulate production directly, and those that are considered to have no direct effect.

Domestic policies that do have a direct effect on production and trade have to be cut back. WTO members calculated how much support of this kind they were providing per year for the agricultural sector (using calculations known as "total aggregate

measurement of support” or “Total AMS”) in the base years of 1986–88. Developed countries agreed to reduce these figures by 20% over six years starting in 1995. Developing countries agreed to make 13% cuts over 10 years. Least-developed countries do not need to make any cuts. (This category of domestic support is sometimes called the “amber box”, a reference to the amber colour of traffic lights, which means “slow down”.)

Measures with minimal impact on trade can be used freely — they are in a “green box” (“green” as in traffic lights). They include government services such as research, disease control, infrastructure and food security. They also include payments made directly to farmers that do not stimulate production, such as certain forms of direct income support, assistance to help farmers restructure agriculture, and direct payments under environmental and regional assistance programmes.

Also permitted, are certain direct payments to farmers where the farmers are required to limit production (sometimes called “blue box” measures), certain government assistance programmes to encourage agricultural and rural development in developing countries, and other support on a small scale (“de minimis”) when compared with the total value of the product or products supported (5% or less in the case of developed countries and 10% or less for developing countries).

Export subsidies: limits on spending and quantities

The Agriculture Agreement prohibits export subsidies on agricultural products unless the subsidies are specified in a member’s lists of commitments. Where they are listed, the agreement requires WTO members to cut both the amount of money they spend on export subsidies and the quantities of exports that receive subsidies. Taking averages for 1986–90 as the base level, developed countries agreed to cut the value of export subsidies by 36% over the six years starting in 1995 (24% over 10 years for developing countries). Developed countries also agreed to reduce the quantities of subsidized exports by 21% over the six years (14% over 10 years for developing countries). Least-developed countries do not need to make any cuts.

During the six-year implementation period, developing countries are allowed under certain conditions to use subsidies to reduce the costs of marketing and transporting exports.

The least-developed and those depending on food imports

Under the Agriculture Agreement, WTO members have to reduce their subsidized exports. But some importing countries depend on supplies of cheap, subsidized food from the major industrialized nations. They include some of the poorest countries, and although their farming sectors might receive a boost from higher prices caused by reduced export subsidies, they might need temporary assistance to make the necessary adjustments to deal with higher priced imports, and eventually to export. A special ministerial decision sets out objectives, and certain measures, for the provision of food aid and aid for agricultural development. It also refers to the possibility of assistance from the International Monetary Fund and the World Bank to finance commercial food imports.

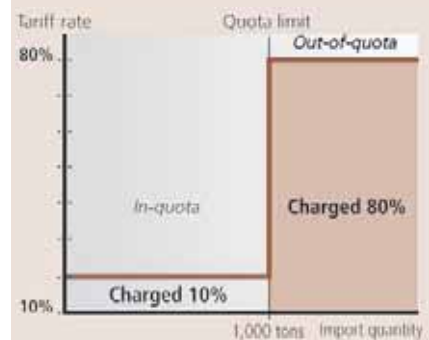
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A tariff-quota

This is what a tariff-quota might look like



Imports entering under the tariff-quota (up to 1,000 tons) are generally charged 10%. Imports entering outside the tariff-quota are charged 80%. Under the Uruguay Round agreement, the 1,000 tons would be based on actual imports in the base period or an agreed “minimum access” formula.

Tariff quotas are also called “tariff-rate quotas”.

Whose international standards?

An annex to the Sanitary and Phytosanitary Measures Agreement names:

- the FAO/WHO Codex Alimentarius Commission: for food
- the International Animal Health Organization (Office International des Epizooties): for animal health
- the FAO's Secretariat of the International Plant Protection Convention: for plant health.

Governments can add any other international organizations or agreements whose membership is open to all WTO members.

When members apply these standards, they are likely to be safe from legal challenge through a WTO dispute.

4. Standards and safety

Article 20 of the General Agreement on Tariffs and Trade (GATT) allows governments to act on trade in order to protect human, animal or plant life or health, provided they do not discriminate or use this as disguised protectionism. In addition, there are two specific WTO agreements dealing with food safety and animal and plant health and safety, and with product standards in general. Both try to identify how to meet the need to apply standards and at the same time avoid protectionism in disguise. These issues are becoming more important as tariff barriers fall — some compare this to seabed rocks appearing when the tide goes down. In both cases, if a country applies international standards, it is less likely to be challenged legally in the WTO than if it sets its own standards.



Food, animal and plant products: how safe is safe?

Problem: How do you ensure that your country's consumers are being supplied with food that is safe to eat — "safe" by the standards you consider appropriate? And at the same time, how can you ensure that strict health and safety regulations are not being used as an excuse for protecting domestic producers?

A separate agreement on food safety and animal and plant health standards (the **Sanitary and Phytosanitary Measures Agreement** or SPS) sets out the basic rules.

It allows countries to set their own standards. But it also says regulations must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.

Member countries are encouraged to use international standards, guidelines and recommendations where they exist. When they do, they are unlikely to be challenged legally in a WTO dispute. However, members may use measures which result in higher standards if there is scientific justification. They can also set higher standards based on appropriate assessment of risks so long as the approach is consistent, not arbitrary. And they can to some extent apply the "precautionary principle", a kind of "safety first" approach to deal with scientific uncertainty. Article 5.7 of the SPS Agreement allows temporary "precautionary" measures.

The agreement still allows countries to use different standards and different methods of inspecting products. So how can an exporting country be sure the practices it applies to its products are acceptable in an importing country? If an exporting country can demonstrate that the measures it applies to its exports achieve the same level of health protection as in the importing country, then the importing country is expected to accept the exporting country's standards and methods.

The agreement includes provisions on control, inspection and approval procedures. Governments must provide advance notice of new or changed sanitary and phytosanitary regulations, and establish a national enquiry point to provide information. The agreement complements that on technical barriers to trade.

Technical regulations and standards

Technical regulations and standards are important, but they vary from country to country. Having too many different standards makes life difficult for producers and exporters. Standards can become obstacles to trade. But they are also necessary for a range of reasons, from environmental protection, safety, national security to consumer



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information. And they can help trade. Therefore the same basic question arises again: how to ensure that standards are genuinely useful, and not arbitrary or an excuse for protectionism.

The **Technical Barriers to Trade Agreement (TBT)** tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles.

However, the agreement also recognizes countries' rights to adopt the standards they consider appropriate — for example, for human, animal or plant life or health, for the protection of the environment or to meet other consumer interests. Moreover, members are not prevented from taking measures necessary to ensure their standards are met. But that is counterbalanced with disciplines. A myriad of regulations can be a nightmare for manufacturers and exporters. Life can be simpler if governments apply international standards, and the agreement encourages them to do so. In any case, whatever regulations they use should not discriminate.

The agreement also sets out a code of good practice for both governments and non-governmental or industry bodies to prepare, adopt and apply voluntary standards. Over 200 standards-setting bodies apply the code.

The agreement says the procedures used to decide whether a product conforms with relevant standards have to be fair and equitable. It discourages any methods that would give domestically produced goods an unfair advantage. The agreement also encourages countries to recognize each other's procedures for assessing whether a product conforms. Without recognition, products might have to be tested twice, first by the exporting country and then by the importing country.

Manufacturers and exporters need to know what the standards are in their prospective markets. To help ensure that this information is made available conveniently, all WTO member governments are required to establish national enquiry points and to keep each other informed through the WTO — around 900 new or changed regulations are notified each year. The Technical Barriers to Trade Committee is the major clearing house for members to share the information and the major forum to discuss concerns about the regulations and their implementation.



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> technical barriers to trade

5. Textiles: back in the mainstream

Textiles, like agriculture, was one of the hardest-fought issues in the WTO, as it was in the former GATT system. It has now completed fundamental change under a 10-year schedule agreed in the Uruguay Round. The system of import quotas that dominated the trade since the early 1960s has now been phased out.

From 1974 until the end of the Uruguay Round, the trade was governed by the Multifibre Arrangement (MFA). This was a framework for bilateral agreements or unilateral actions that established quotas limiting imports into countries whose domestic industries were facing serious damage from rapidly increasing imports.

The quotas were the most visible feature. They conflicted with GATT's general preference for customs tariffs instead of measures that restrict quantities. They were also exceptions to the GATT principle of treating all trading partners equally because they specified how much the importing country was going to accept from individual exporting countries.

Since 1995, the WTO's **Agreement on Textiles and Clothing (ATC)** took over from the Multifibre Arrangement. By 1 January 2005, the sector was fully integrated into normal GATT rules. In particular, the quotas came to an end, and



importing countries are no longer able to discriminate between exporters. The Agreement on Textiles and Clothing no longer exists: it's the only WTO agreement that had self-destruction built in.

Integration: returning products gradually to GATT rules

Textiles and clothing products were returned to GATT rules over the 10-year period. This happened gradually, in four steps, to allow time for both importers and exporters to adjust to the new situation. Some of these products were previously under quotas. Any quotas that were in place on 31 December 1994 were carried over into the new agreement. For products that had quotas, the result of integration into GATT was the removal of these quotas.

Four steps over 10 years		
The schedule for freeing textiles and garment products from import quotas (and returning them to GATT rules), and how fast remaining quotas had to be expanded.		
The example is based on the commonly-used 6% annual expansion rate of the old Multifibre Arrangement. In practice, the rates used under the MFA varied from product to product.		
Step	Percentage of products to be brought under GATT (including removal of any quotas)	How fast remaining quotas should open up, if 1994 rate was 6%
Step 1: 1 Jan 1995 (to 31 Dec 1997)	16% (minimum, taking 1990 imports as base)	6.96% per year
Step 2: 1 Jan 1998 (to 31 Dec 2001)	17%	8.7% per year
Step 3: 1 Jan 2002 (to 31 Dec 2004)	18%	11.05% per year
Step 4: 1 Jan 2005 Full integration into GATT Agreement on Textiles and Clothing terminates.	49% (maximum)	No quotas left
The actual formula for import growth under quotas was: by 0.1 x pre-1995 growth rate in the first step; 0.25 x Step 1 growth rate in the second step; and 0.27 x Step 2 growth rate in the third step.		

The agreement stated the percentage of products that had to be brought under GATT rules at each step. If any of these products came under quotas, then the quotas had to be removed at the same time. The percentages were applied to the importing country's textiles and clothing trade levels in 1990. The agreement also said the quantities of imports permitted under the quotas had to grow annually, and that the rate of expansion had to increase at each stage. How fast that expansion would be was set out in a formula based on the growth rate that existed under the old Multifibre Arrangement (*see table*).

Products brought under GATT rules at each of the first three stages had to cover the four main types of textiles and clothing: tops and yarns; fabrics; made-up textile products; and clothing. Any other restrictions that did not come under the Multifibre Arrangement and did not conform with regular WTO agreements by 1996 had to be made to conform or be phased out by 2005.

If further cases of damage to the industry arose during the transition, the agreement allowed additional restrictions to be imposed temporarily under strict conditions.

These “transitional safeguards” were not the same as the safeguard measures normally allowed under GATT because they can be applied on imports from specific exporting countries. But the importing country had to show that its domestic industry was suffering serious damage or was threatened with serious damage. And it had to show that the damage was the result of two things: increased imports of the product in question from all sources, and a sharp and substantial increase from the specific exporting country. The safeguard restriction could be implemented either by mutual agreement following consultations, or unilaterally. It was subject to review by the Textiles Monitoring Body.

In any system where quotas are set for individual exporting countries, exporters might try to get around the quotas by shipping products through third countries or making false declarations about the products’ country of origin. The agreement included provisions to cope with these cases.

The agreement envisaged special treatment for certain categories of countries — for example, new market entrants, small suppliers, and least-developed countries.

A **Textiles Monitoring Body (TMB)** supervised the agreement’s implementation. It consisted of a chairman and 10 members acting in their personal capacity. It monitored actions taken under the agreement to ensure that they were consistent, and it reported to the Goods Council which reviewed the operation of the agreement before each new step of the integration process. The Textiles Monitoring Body also dealt with disputes under the Agreement on Textiles and Clothing. If they remained unresolved, the disputes could be brought to the WTO’s regular Dispute Settlement Body. When the Textiles and Clothing Agreement expired on 1 January 2005, the Textiles Monitoring Body also ceased to exist.



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6. Services: rules for growth and investment

The General Agreement on Trade in Services (GATS) is the first and only set of multilateral rules governing international trade in services. Negotiated in the Uruguay Round, it was developed in response to the huge growth of the services economy over the past 30 years and the greater potential for trading services brought about by the communications revolution.

Services represent the fastest growing sector of the global economy and account for two thirds of global output, one third of global employment and nearly 20% of global trade.

When the idea of bringing rules on services into the multilateral trading system was floated in the early to mid 1980s, a number of countries were sceptical and even opposed. They believed such an agreement could undermine governments’ ability to pursue national policy objectives and constrain their regulatory powers. The agreement that was developed, however, allows a high degree of flexibility, both within the framework of rules and also in terms of the market access commitments.

GATS explained

The **General Agreement on Trade in Services** has three elements: the main text containing general obligations and disciplines; annexes dealing with rules for specific sectors; and individual countries’ specific commitments to provide access to their markets, including indications of where countries are temporarily not applying the “most-favoured-nation” principle of non-discrimination.

Basic principles

- All services are covered by GATS
- Most-favoured-nation treatment applies to all services, except the one-off temporary exemptions
- National treatment applies in the areas where commitments are made
- Transparency in regulations, inquiry points
- Regulations have to be objective and reasonable
- International payments: normally unrestricted
- Individual countries’ commitments: negotiated and bound
- Progressive liberalization: through further negotiations

General obligations and disciplines

Total coverage The agreement covers all internationally-traded services — for example, banking, telecommunications, tourism, professional services, etc. It also defines four ways (or “modes”) of trading services:

- services supplied from one country to another (e.g. international telephone calls), officially known as “**cross-border supply**” (in WTO jargon, “mode 1”)
- consumers or firms making use of a service in another country (e.g. tourism), officially “**consumption abroad**” (“mode 2”)
- a foreign company setting up subsidiaries or branches to provide services in another country (e.g. foreign banks setting up operations in a country), officially “**commercial presence**” (“mode 3”)
- individuals travelling from their own country to supply services in another (e.g. fashion models or consultants), officially “**presence of natural persons**” (“mode 4”).



Most-favoured-nation (MFN) treatment Favour one, favour all. MFN means treating one’s trading partners equally on the principle of non-discrimination. 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. (This applies even if the country has made no specific commitment to provide foreign companies access to its markets under the WTO.)

MFN applies to all services, but some special temporary exemptions have been allowed. 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. WTO members felt it was necessary to maintain these preferences temporarily. They gave themselves the right to continue giving more favourable treatment to particular countries in particular services activities by listing “MFN exemptions” alongside their first sets of commitments. In order to protect the general MFN principle, the exemptions could only be made once; nothing can be added to the lists. They are currently being reviewed as mandated, and will normally last no more than ten years.

Commitments on market access and national treatment Individual countries’ commitments to open markets in specific sectors — and how open those markets will be — are the outcome of negotiations. The commitments appear in “schedules” that list the sectors being opened, the extent of market access being given in those sectors (e.g. whether there are any restrictions on foreign ownership), and any limitations on national treatment (whether some rights granted to local companies will not be granted to foreign companies). So, for example, if a government commits itself to allow foreign banks to operate in its domestic market, that is a **market-access commitment**. And if the government limits the number of licences it will issue, then that is a **market-access limitation**. If it also says foreign banks are only allowed one branch while domestic banks are allowed numerous branches, that is an **exception to the national treatment** principle.