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### Uruguay Round

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## A. Negotiations

**1** The Uruguay Round was the eighth post-war multilateral trade negotiation conducted under the → *General Agreement on Tariffs and Trade (1947 and 1994)* ('GATT 1947' and 'GATT 1994'; see also → *International Economic Law*). It started with a Ministerial Meeting held in Punta del Este in Uruguay on 20 September 1986. The → *Final Act* and the texts annexed were eventually signed in Marrakesh, Morocco, on 15 April 1994, and entered into force on 1 January 1995. This round led to the creation of the → *World Trade Organization (WTO)*. For the first time, multilateral trade negotiations covered virtually every sector of world trade. Moreover and equally unprecedented, participation by both industrialized and → *developing countries* was truly global. Overall, the Uruguay Round was the largest trade negotiation ever, and it resulted in a historic quantum leap in institutionalized global economic cooperation.

### 1. Launch

**2** One of the essential functions of the GATT 1947 framework was to host a series of major multilateral trade negotiation rounds. The first six of these rounds were concerned mainly with the reduction of tariffs (Geneva Conference 1947; Annecy Conference 1949; Torquay Conference 1950–51; Geneva Conference 1956; Geneva Conference [also known as Dillon Round] 1960–61; Kennedy Round 1964–67). From the seventh round onwards (Tokyo Round 1973–79), negotiations on → *non-tariff barriers to trade* moved to centre stage. However, the Tokyo Round was only partly successful in reducing tariffs and in disciplining domestic non-tariff measures. Participation in the new codes governing non-tariff barriers, in particular by developing countries, was limited. Other major trade issues remained completely unresolved. Therefore, it became evident well before the modest results of the Tokyo Round were even fully implemented that the limited coverage, and often plurilateral character of GATT 1947, as well as its provisional and imperfect institutional structure could no longer serve as a stable and effective framework for international trade. Moreover, global recession at the beginning of the 1980s resulted in a serious decline in international trade, in terms of both value and volume, and led to protectionist pressures worldwide. Confidence in the multilateral trading regime was fading. The central role of the principle of non-discrimination was eroded. Industrialized countries increasingly applied safeguards and other trade-restrictive measures outside of the GATT 1947, such as voluntary export restraint arrangements ('VERs'; see paras 22 and 24 below). Symptomatically, the number of trade disputes brought before the GATT Council reached a record level of 13 cases in 1980, of which 10 concerned trade in agricultural products (Croome 7).

**3** Against this background, the United States suggested, as early as 1982, that a new round of multilateral trade negotiations should be launched. A prime force behind the initiatives for a new round was Arthur Dunkel, who took over as Director-General of GATT 1947 in 1980, remaining in office until 1993. Moreover, the Consultative Group of Eighteen, a representative group of senior trade officials from various countries established in 1981, was instrumental in identifying an ambitious set of negotiating objectives under the GATT 1947. At first, support for the proposal to launch a new round, as presented by the United States, was only lukewarm. Many GATT 1947 contracting parties—among them both developing countries, such as Brazil and India, and industrialized entities, such as the European Community—opposed a comprehensive new round. Some developing countries still pinned their hopes on a complete reshaping of the international trading regime under the auspices of the → *United Nations Conference on Trade and Development (UNCTAD)*, propagating a → *New International Economic Order (NIEO)*. Other developing countries mainly feared that too broad a coverage of new subjects being brought under the umbrella of the GATT would disproportionately favour industrialized countries. They were particularly concerned about services, investment, and intellectual property protection (see

also → *Intellectual Property, International Protection*; → *Investments, International Protection*; → *Services, Trade in*). If a new round was to be initiated, they argued, progress should primarily be sought in areas of economic significance to developing countries such as trade in agriculture, and in textiles and clothing. Equally, various industrialized countries did not, initially, agree on the launching of a new round. The EC was reluctant to enter into negotiations on liberalizing trade in agriculture and thus endangered its Common Agricultural Policy ('CAP'). Moreover, the EC gave priority to developing its internal market and to securing its preferential trading relations with its former colonies under the Lomé Convention (EEC-ACP Convention of Lomé [done 28 February 1975, entered into force 1 April 1976] [1975] 14 ILM 604 ('Lomé Convention'); → *Lomé/Cotonou Conventions*). Japan was equally hesitant, resolving its trade differences with the United States and the EC mainly bilaterally, and fearing to be forced, in further multilateral negotiations, to open up its highly protected market for agricultural products.

**4** At last, the Final Declaration of the Ministerial Conference held in Geneva in 1982 acknowledged that 'the multilateral trading system, of which the General Agreement is the legal foundation, is seriously endangered' (para. 1 GATT Ministerial Declaration of the Thirty-Eighth Session of the GATT contracting parties [29 November 1982] GATT Doc W. 38/4), and launched cautious exploratory work on various topics, many of which were in due course to figure prominently in the Uruguay Round. Gradually, support for a new round grew. In 1985, a group of independent experts, invited by Arthur Dunkel, argued in favour of a new round of GATT negotiations, 'provided they are directed toward the primary goal of strengthening the multilateral trading system and further opening world markets' (Chapter 3 para. 13 Leutwiler Report). Later in 1985, the GATT 1947 contracting parties agreed to establish a preparatory committee to set up a draft programme for a new round. By the time of the Punta del Este Ministerial Meeting in September 1986, a broad coalition of countries had eventually succeeded in persuading the contracting parties that further negotiations should be pursued under the GATT 1947 in order to complement domestic policy reforms in economic matters, and to counteract the trends towards unilateral protectionism and regionalism instead of liberal multilateralism (see also → *Regional Trade Agreements*; → *Unilateralism/Multilateralism*; → *Unilateral Trade Measures*). Hence, on 20 September 1986, the Uruguay Round was formally initiated.

**5** The mandate for negotiations was enormously broad and ambitious. Taken at face value, the Ministerial Declaration on the Uruguay Round of Multilateral Trade Negotiations ('Punta del Este Declaration') called for a major restructuring of the GATT 1947, which had focused exclusively on regulating trade in goods (tariffs and non-tariff barriers). The Uruguay Round opened new avenues by turning attention to services as well as to trade-related aspects of investment and of intellectual property, all of which have been fields of rapidly growing importance in international trade. It was agreed to give serious consideration to trade in agriculture and in textiles and clothing. Trade in industrial goods was to be further liberalized and disciplined, and the problematic area of safeguards was, once again, put high on the agenda. Institutionally, the negotiators intended to improve and strengthen the dispute settlement mechanism which was only poorly developed at the time. However, the creation of a new international organization, superseding the GATT 1947, was not among the initial objectives.

**6** The Uruguay Round agenda divided the negotiations into two parts. Negotiations on trade in goods were placed firmly in the context of the GATT, agreed upon by the ministers in their capacity as representatives of the GATT 1947 contracting parties. Negotiations on trade in services were initiated separately by the same ministers acting, this time, simply as representatives of their governments. Back in Geneva, 15 working groups were duly established to negotiate on the various subjects (14 goods-related subjects, including the systemic functioning of the GATT system, and services). Moreover, a 'standstill and

rollback' obligation called upon the participants not to adopt additional trade-restrictive or distorting measures with a view to improve their negotiating position, and to phase out all trade-restrictive measures not in conformity with the GATT 1947 by the end of the round.

## 2. Chronology

**7** At the 'Mid-Term' Ministerial Meeting in Montreal in December 1988, a first stocktaking resulted in agreement being reached on 11 of the 15 negotiating topics. No agreement was reached in the areas of agriculture, textiles and clothing, safeguards, and intellectual property. At least, a small package of early results was formally adopted, including → *concessions* on market access for tropical products and provision for the systematic and periodic review of national trade policies. The deadlock in the main subjects could not be resolved in further attempts, and it became evident that the original goal of concluding the Uruguay Round by the end of 1990, as foreseen in the preamble to the Punta del Este Declaration, could not be met. This failure, largely a result of the stalemate over agriculture, was formally taken note of at the Ministerial Meeting in Brussels in December 1990. Although several observers contemplated the definite end of the Uruguay Round and, as a practical consequence, the acutely uncertain future of the GATT 1947 as a whole, negotiators resumed their work and met throughout 1991, again without achieving a breakthrough.

**8** At the end of 1991, the Director-General of GATT 1947, Arthur Dunkel, issued a comprehensive Draft Final Act, containing agreed texts and, according to his personal assessment, realistically feasible compromises (Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations [20 December 1991] GATT Doc MTN.TNC/W/FA). The 'Dunkel Draft' or 'DFA', as this document came to be known, reflected the impressive range of areas in which agreement had already been reached compared to the relatively few leftovers, which still divided the countries and negotiating groups involved. The Dunkel Draft became the basic working document for the remaining negotiations. These continued throughout 1992 and 1993 and lurched between impending failure and predictions of imminent success. Several deadlines were missed, and new areas of major disagreement emerged in addition to agriculture: services, market access, → *anti-dumping* rules, and the creation of a new institution. Moreover, a primary reason for the uncertain course of the negotiations was that the two most powerful and influential players at the negotiating table, the United States and the EC, were largely absorbed by domestic policy matters. The latter concentrated on reforming its CAP internally, before it was ready to return wholeheartedly to the deadlocked negotiations on agriculture on the multilateral level. Even though the EC succeeded in reforming the CAP in May 1992, a tense political campaign against any further liberalization in agricultural trade, especially in France, substantially limited the room for manoeuvre of the EC negotiators in the Uruguay Round. Meanwhile, the new Clinton administration in the United States focused its attention, in external economic policy matters, on the negotiations of the → *North American Free Trade Agreement (1992)* ('NAFTA') which proved domestically to be more controversial than the Uruguay Round. Moreover, the US executive branch needed to convince the US Congress to renew its 'fast track authority' (now 'trade promotion authority') which was granted, as of 30 June 1993, only to expire on 15 April 1994. This date, artificially set by a single country but informally consulted with others, implied the completion of the round by 15 December 1993, taking into account the necessary period of notice to US Congress. Consequently, these dates were tacitly accepted as a genuine final deadline for the completion of the Uruguay Round.

**9** In fact, it became evident towards the end of 1993 that agreement could be reached on the remaining deadlocked topics. The way to the compromise over agriculture was paved after the United States and the EC had bridged their different positions in a bilateral deal, informally known as the 'Blair House' accords. By July 1993, the 'Quad', consisting of the United States, the European Community, Japan and Canada, announced significant progress in negotiations on tariff reductions for industrial goods (market access), and related subjects. The final stage of the negotiations took place under the newly-appointed Director-General of the GATT 1947, Peter Sutherland, who was instrumental in building the necessary political momentum. The Uruguay Round was successfully concluded in Geneva on 15 December 1993.

### **3. Conclusion**

**10** On 15 April 1994, the final package of the Uruguay Round results, consisting of the umbrella Agreement Establishing the World Trade Organization (also referred to as the 'WTO Agreement', 'WTO Charter' or 'Marrakesh Agreement') and four annexes, was solemnly signed in Marrakesh, Morocco. The WTO entered into force on 1 January 1995. By that date, 76 countries had already ratified the new agreement. By 1997, all 123 former GATT 1947 contracting parties had accepted the WTO Agreement and thus became original members of the new organization. The GATT 1947, which was considered a *de facto* international organization and existed as *provisoire qui dure* for almost 50 years, remained in force until the end of 1995, ie in coexistence with the WTO, when it was formally terminated. Thus, the WTO was founded, legally speaking, as a new international organization and did not supersede the GATT 1947, although this was the case in practice (see also → *International Organizations or Institutions, Succession*). In essence, the establishment of the WTO did not mark a point of departure but a continuum, building upon and continuing the experience of multilateral trade relations gained over almost 50 years (see Art. XVI (1) WTO Agreement; introductory note to the GATT 1994).

**11** Participation by negotiating countries in the Uruguay Round was truly global. In particular, the active involvement of developing countries was a novelty in multilateral trade diplomacy. Developing countries, numerically representing a clear majority, began to mobilize and forge strategic alliances. Their active participation broadened the potential for trade-offs and for the package deal which was finally agreed upon. Although some developing countries pointed, during the closing ceremony of the round, to areas of deficiency and to the lack of commitments on the part of industrialized countries with respect to specific needs of the developing world, the Uruguay Round was a truly multilateral undertaking. At the same time, the negotiations had their primary pacemakers. The United States and the EC preconditioned to a considerable extent substantive progress and setbacks. This was particularly true for the final phase of the negotiations.

## **B. Results**

**12** The Uruguay Round results prove that consensus diplomacy and package deals in big trade rounds are capable of achieving impressive results. The political momentum, built up towards the end of the round, and the prospect of a trade-off acceptable to all participants, led to the successful conclusion of the round. The key results can be summarized as follows.

### **1. Institutional Reforms**

**13** Multilateral trade rules have been endowed, for the first time, with a sound institutional framework. The WTO Agreement explicitly establishes an international organization vested with legal personality (see Art. VIII (1) WTO Agreement) and provides for those organs which are characteristic for an international organization (see Art. IV WTO Agreement). The structure is headed by a Ministerial Conference (composed of all members, meeting at least

once every two years) and the General Council (also made up of the full membership, meeting between sessions of the Ministerial Conference). Furthermore, various subsidiary bodies report to the General Council. The secretariat is headed by the Director-General (see Art. VI WTO Agreement; → *International Organizations or Institutions, Secretariats*). Both the power of the Director-General and the number of staff employed at the WTO are relatively small compared to the Bretton Woods institutions and other international organizations (see → *Bretton Woods Conference [1944]*; → *International Bank for Reconstruction and Development [IBRD]*; → *International Monetary Fund [IMF]*). Notably, it became evident only towards the end of the Uruguay Round that an appropriate framework would be indispensable for the proper administration of the various instruments under the WTO. The creation of a new international trade organization was not planned at the outset of the round. When this was proposed for the first time by Canada in 1990, many countries opposed the establishment of a formally constituted international organization as a threat to national → *sovereignty* and to the character of the GATT 1947 as being purely member-driven. The United States was a prominent opponent and consented to the establishment of a new trade organization only during the very last days of the round, and on condition that its name was to be the World Trade Organization, as originally proposed by Canada, instead of Multilateral Trade Organization, as originally proposed by the EC and favoured by most other countries.

**14** Crucial for the truly multilateral nature of the WTO, the Uruguay Round established the concept of ‘single undertaking’, also known as ‘single package deal’ (see Art. II (2) WTO Agreement). Unlike the GATT 1947 and its side agreements, many of which were optional (‘GATT à la carte’), the WTO does not allow for variable geometry and membership, except for two plurilateral trade agreements that remain in force, namely the Agreement on Government Procurement and the Agreement on Trade in Civil Aircraft (Agreement on Government Procurement [signed 15 April 1994, entered into force 1 January 1996] 1915 UNTS 103; Agreement on Trade in Civil Aircraft [concluded 12 April 1979, entered into force 1 January 1980] 1186 UNTS 170; → *Government Procurement, International Restrictions*). The structure of the WTO reflects the common understanding that all countries should have equal rights and obligations, subject only to provisions on special and differential treatment for developing and least-developed countries (see also → *World Trade, Principles*). At the same time, the WTO Agreement does not explicitly exclude a return to more extensive variable geometry in the future.

**15** The WTO Agreement established, with the Understanding on Rules and Procedures Governing the Settlement of Disputes (‘DSU’), a unified and compulsory dispute settlement mechanism for all covered agreements adopted under the umbrella of the WTO (→ *World Trade Organization, Dispute Settlement*). The DSU fundamentally changes the nature of dispute resolution under the GATT 1947 and ensures that a rule-oriented technique of dispute resolution prevails (Jackson 109). Various core features of the DSU corroborate its dedication to a legal approach and effectively bar recourse to unilateral action and bilateral circumvention. It is no longer possible to block the establishment of a panel. A losing party may reject the adoption of a panel report by appealing to the appellate body. But it is not possible to block the adoption of an appellate body report. The DSU provides for the automatic adoption of reports by the Dispute Settlement Body (‘DSB’), unless there is consensus among all WTO Member States to the contrary, thus including the winning party. As a result, panel and appellate body reports as adopted by the DSB amount to legally binding decisions. The DSU contains detailed rules that encourage → *compliance* with panel and appellate body reports and allow for retaliation as a response to non-compliance. In

essence, the creation of the DSU is the greatest achievement in the process of *juridification* of dispute settlement in the field of international trade regulation.

## 2. New Issues

**16** The Uruguay Round broke new ground by substantially broadening the coverage of world trade rules, thus keeping them abreast of new developments in the international economy. Whereas the GATT 1947 only dealt with trade in goods, the WTO contains new agreements on trade in services and on intellectual property protection.

**17** While individual service sectors were already partly dealt with by international agreements before the Uruguay Round, and principles of service liberalization were pioneered within the EC and the NAFTA, the → *General Agreement on Trade in Services (1994)* ('GATS') provides the first comprehensive multilateral agreement in this field. It has created an overall framework to serve as the basis for progressive liberalization and for enhancing market access in the coming decades. The GATS mirrors the structure of the GATT and embraces some of its traditional cornerstones such as the → *most-favoured-nation clause*, the principle of national treatment and the principle of market access through schedules of concessions, taking into account the peculiarities of trade in services (see also → *National Treatment, Principle*). National treatment and market access obligations, however, fully apply only to specific commitments to which individual members have positively agreed. Given its novelty and regulatory complexity, the GATS amounts to a truly remarkable achievement and a historic watershed in disciplining transnational trade in services. In the aftermath of the Uruguay Round, unfinished business in the areas of financial and telecommunications services was able to be resolved, leading to comprehensive annexes to the GATS for these sectors (see also → *Telecommunications, International Regulation*).

**18** The structure and content of the → *Agreement on Trade-Related Aspects of Intellectual Property Rights (1994)* (Agreement on Trade-Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods [signed 15 April 1994, entered into force 1 January 1995] 1869 UNTS 299; 'TRIPS Agreement') are less revolutionary than those of the GATS. Since the late 19<sup>th</sup> century, a host of multilateral agreements has sought to protect innovation and creativity by allocating exclusive intellectual property rights. Most of this body of international law was developed within the → *World Intellectual Property Organization (WIPO)* and, in more specific terms, within regional organizations. However, the criticism was often raised that international treaties in this field lacked effective enforcement mechanisms. The comprehensive TRIPS Agreement successfully brought intellectual property protection under the umbrella of the multilateral trading regime, building upon, and incorporating, the Paris and Berne Conventions and enacting, in addition, procedural norms (Convention for the Protection of Industrial Property [signed 20 March 1883, entered into force 6 July 1884] 828 UNTS 107; 'Paris Convention'; Convention for the Protection of Literary and Artistic Works [concluded 9 September 1886] 1161 UNTS 3; 'Berne Convention'). Like the GATS, the TRIPS Agreement embraces the traditional GATT principles of most-favoured-nation and national treatment, allowing for a number of enumerated exceptions. The TRIPS Agreement emerged after long and difficult negotiations. Many developing countries strongly contested its inclusion in the WTO framework. They reluctantly gave in only in anticipation of cross-concessions for liberalizing trade in agriculture and in textiles and clothing. Moreover, they negotiated long implementation periods, some of which have since been extended.

**19** Another working group, which conceptually dealt with a ‘new issue’, addressed investment measures related to trade. This subject did not, however, receive much attention during the negotiations. The newly drafted Agreement on Trade-Related Investment Measures ([signed 1 April 1995, entered into force 1 January 1995] 1868 UNTS 186; ‘TRIMs Agreement’) confines its regulatory scope to a few specific measures that had proven problematic in GATT 1947 practice. Essentially, the TRIMs Agreement reaffirms the principle of national treatment, as related to particular types of investment measures.

### **3. Trade in Goods**

**20** In the area of goods, various working groups were mandated to review the GATT 1947 and its side agreements. Eventually, the negotiations did not result in changes to existing GATT 1947 provisions. The views on potential improvements were too diverse. Instead, the newly established GATT 1994 formally incorporates the GATT 1947, accompanied by six understandings which interpret and further develop specific provisions of the GATT. In addition, already existing side agreements have been, at least partly, changed, and new side agreements have been added.

**21** Throughout the round, negotiations on trade in agricultural products held centre stage. This topic has been, and remains, one of the most contentious issues in the GATT/WTO negotiating history. The GATT 1947 was characterized, with respect to agricultural products, by high levels of protectionism and ineffective enforcement of rights and obligations. The Uruguay Round successfully addressed the systemic deficiencies. It prepared the ground for long-term trade liberalization with the Agreement on Agriculture by *tariffication* of existing quantitative restrictions and by accepting first-albeit modest-steps towards tariff reductions and limitations on subsidization. The process of further reducing levels of trade restrictions and domestic support is supposed to take place in subsequent trade rounds (see para. 29 below). Enforcement of existing rules is strongly reinforced by the dispute settlement system under the DSU (see para. 15 above). It is not a coincidence that some of the most contentious cases in WTO jurisprudence so far have been concerned with agricultural products. Moreover, the Uruguay Round introduced the Agreement on the Application of Sanitary and Phytosanitary Measures (‘SPS Agreement’; see also → *Sanitary and Phytosanitary Standards*) which applies also to agricultural products. While it did not attract much attention during the negotiations, this agreement quickly moved to the centre of major trade disputes after its adoption and has profoundly affected the international law on food security (see → *EC—Hormones Case*; WTO *EC—Measures Concerning Meat and Meat Products [Hormones]-AB-1997-4-Report of the Appellate Body* [16 January 1998] WT/DS26/AB/R and WT/DS48/AB/R).

**22** The Uruguay Round has been equally successful with respect to trade in textiles and clothing. As in agriculture, the history of trade in textiles and clothing in the second half of the 20<sup>th</sup> century is largely a story of efforts by industrialized countries to protect their domestic producers from overseas competition. Considerable pressure from these countries resulted in a series of bilateral and plurilateral VERs being concluded, prominently among them the Multifibre Arrangement (‘MFA’) of 1974. During the Uruguay Round, industrialized countries agreed to end special protection for the textiles and clothing sector, and enabled the Agreement on Textiles and Clothing (‘ATC’) to be concluded. This agreement had as its primary objective the dismantling of all trade-restrictive, GATT-inconsistent measures and the re-integration of the textiles and clothing sector into the GATT within a phase-in period of ten years. The agreement formally expired at the end of 2004, when textiles and clothing became fully subject to WTO disciplines, even though the right to adopt ATC-style safeguard measures against Chinese textiles until the end of 2008 has been retained as a condition of Chinese accession to the WTO (see para. 242 Report of the Working Party on the Accession of China [1 October 2001] WT/ACC/CHN/49). Like

agricultural products, however, textiles and clothing exports remain subject to tariff levels substantially higher than, and in some cases far in excess of, those applied to most other industrial goods.

**23** Tariff reductions relating to other industrial goods were not regarded as one of the main successes of the Uruguay Round, although a substantive cut from an average of 6.3% (Tokyo Round level) to an average of 3.9% among industrialized countries were achieved, partly by negotiating on an item-by-item basis, and partly by using the so-called 'formula approach' by which a negotiated tariff reduction formula automatically applies to all tariff lines agreed. Moreover, major trading countries agreed to eliminate tariffs altogether for a number of specific product sectors such as chemical and pharmaceutical products, medical equipment, and information technology products as a result of so-called *zero-for-zero sector negotiations*. Although such plurilateral negotiations were conducted only among a number of prime supplying and importing countries, the agreed packages are subject to the principle of most-favoured-nation treatment and thus benefit all members alike, without requiring → *reciprocity*. Hence, the round managed to reduce tariffs to almost insignificant levels among the industrialized countries, with the well-known exceptions of trade in agriculture, and in textiles and clothing. With respect to developing countries, the Uruguay Round had the effect of increasing significantly the percentage of tariff lines being bound in the members' schedules (from the Tokyo Round level of 22% to 72% after the Uruguay Round).

**24** Lastly, the Uruguay Round produced useful results in further disciplining trade measures. This holds true for many side agreements which further specify GATT provisions and constitute *lex specialis*. Among other improvements, the new Agreement on Safeguards notably bans the use of VERs, which had been a most pernicious form of import protection during the GATT 1947 years. New agreements were also adopted on → *rules of origin* (see Agreement on Rules of Origin; 'RO Agreement') and on pre-shipment inspection. Side agreements, which had already been concluded during the Tokyo Round, such as the Agreement on Implementation of Article VI GATT 1994, the Agreement on Implementation of Article VII GATT 1994 (Customs Valuation; → *Customs Law, International*), the Agreement on Subsidies and Countervailing Measures (SCM Agreement; → *Subsidies, International Restrictions*), the Agreement on Import Licensing Procedures and the Agreement on Technical Barriers to Trade ('TBT Agreement'; → *Technical Barriers to Trade*) were further developed and refined. The single undertaking approach (see para. 14 above) ensured that adherence to these agreements, formerly plurilateral in nature, would be mandatory for all WTO members.

## **C. Concluding Remarks**

### **1. Overall Assessment**

**25** The Uruguay Round is generally considered to constitute a milestone and a substantive breakthrough in multilateral trade relations. It has produced a rich array of binding agreements, many of which have been characterized by their unprecedented broad coverage of issues and their often novel character. The Uruguay Round has strengthened the multilateral trading system and has provided it with a sound and stable institutional framework. The objectives set out in the Punta del Este Declaration were able to be met with respect to virtually all identified negotiation subjects. The success of the Uruguay Round came at a crucial time: with the creation of the WTO, the negotiators succeeded in halting the erosion of confidence in the multilateral trade regime and in removing the uncertainty about the future course of trade policy of the major trading nations. From a historical perspective, the Uruguay Round accomplished the objective of creating a truly

multilateral and liberal world trading regime, which had originally been envisaged by the signatories of the → *Havana Charter (1948)* almost half a century earlier.

**26** In order to fully operationalize the legal texts, their proper implementation into domestic law has been crucial. Although many of the agreements have a far-reaching impact on domestic policy-making in economic matters, this difficult task has been satisfactorily accomplished by most WTO members. This holds particularly true for industrialized countries, whereas several developing and least-developed countries have encountered problems in implementing some specific rights and obligations aptly and promptly. These problems were arguably underestimated during the negotiations, and what has commonly been referred to as ‘implementation issues’ has remained high on the WTO agenda ever since the conclusion of the Uruguay Round. In 2001, the WTO membership officially acknowledged ‘the difficulties and resource constraints that have been encountered in the implementation of obligations in various areas’ (preamble Doha Ministerial Conference Decision on Implementation-Related Issues and Concerns) and agreed to take appropriate actions, in particular by clarifying the obligations of developing countries, by providing → *technical assistance*, and by extending implementation periods.

**27** Irrespective of some outstanding implementation issues, a preliminary assessment of the functioning of the WTO after the first decade of its existence, and thus of the impact of the results of the Uruguay Round on international trade, is markedly positive. Most commentators agree that the WTO has, so far, been functioning well. Its creation has led to substantial new trading opportunities and has made a considerable contribution to economic growth and stability in international economic relations. They are based on legal security and predictability. The WTO two-tier system of dispute resolution has produced important leading cases, many of which have attained the status of *causes célèbres* and are known well beyond the international trade community. Not surprisingly, this system ranks among the most sophisticated and efficient tools for the → *judicial settlement of international disputes* on offer in contemporary international law.

**28** At the same time, the first years of operation of the WTO have also revealed some systemic deficiencies and shortcomings, prominent among them being the cumbersome internal decision-making process, traditionally based on the quest for consensus, and its imbalance with the judicialized, highly effective dispute resolution mechanism, the further integration of developing countries into the WTO system, the relationship of WTO disciplines to regionalism, and the issues of legitimacy and transparency (see also → *International Organizations or Institutions, Decision-Making Process*; → *International Organizations or Institutions, Democratic Legitimacy*). These topics for institutional reform need to be addressed in future negotiations.

**29** Moreover, the Uruguay Round is overall said to have produced unbalanced results to the detriment of developing and least-developed countries. It is argued that the agreed rights and obligations are not mutually advantageous and have not been achieved on the basis of reciprocity, serving as a general principle of negotiations in the field of international trade, whereby each signatory is expected to make adequate concessions in terms of market access (see preamble WTO Agreement; preamble and Art. XXVIII *bis* GATT 1994). In particular, no substantial progress has been made in agriculture, a key area for many developing countries. Moreover, special and differential treatment provisions continue to exist, but many were shaped in terms of transitional periods. The Generalized System of Preferences (‘GSP’), based on the ‘Enabling Clause’ of 1979, allows industrialized countries to unilaterally grant preferential market access to developing and least-developed countries (→ *World Trade, Principles*). However, the effectiveness of current GSP schemes is increasingly doubted. In particular, the current law does not provide for a multilateral system of preferences. It allows making the availability of preferences conditional on the

fulfilment of policy goals such as environmental standards and labour rights (see also → *Trade and Environment*; → *Trade and Labour Standards*). Accordingly, national GSP schemes lack legal security and predictability.

## 2. Further Developments

**30** The final results of the Uruguay Round themselves contain various provisions for further work programmes and negotiations. The 'built-in agenda' provides for a periodic review of certain agreements or provisions, and contains commitments to launch new negotiations on specific subjects after a certain period of time. The legal texts, inter alia, require a review of the functioning of the dispute settlement mechanism (Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes); addressing the improvement of institutional issues of the GATS, among them safeguards (Art. X GATS), government procurement (Art. XIII GATS) and subsidies (Art. XV GATS); progressive liberalization of trade in services (Art. XIX (1) GATS) and of trade in agriculture (Art. 20 Agreement on Agriculture); entering into negotiations aimed at increasing the protection of geographical indications (Art. 24 TRIPS Agreement); deciding whether the newly invented category of non-actionable subsidies should be retained (Art. 31 SCM Agreement); and enhancement of positive interaction between trade and environmental measures (see Decision on Trade in Services and the Environment). To date, the WTO membership has not completed the work on fulfilling any of these mandates. The inclusion of some topics in the 'built-in agenda' clearly reflects the fact that the Uruguay Round fell short of resolving all negotiating topics to the satisfaction of all participants. This holds particularly true for trade in agriculture. Further multilateral trade rounds will essentially depend on progress in this field, and will be successful only if industrialized countries are prepared to agree on commitments considered adequate by the main agricultural producers.

**31** Moreover, the on-going process of → *globalization* and expansion of transnational trade has led to new challenges for the multilateral trading regime. Topics such as competition and investment protection, e-commerce, and the delicate relationship of WTO law to other trade-related issues (so-called 'trade and ...' or 'linkage' issues such as → *human rights*, labour standards and environmental measures) stand at the forefront when new topics, which were not mentioned in the Uruguay Round mandate, are considered to be brought under the auspices of the WTO (see also → *Antitrust or Competition Law, International*; → *Trade and Human Rights*). However, efforts to this effect have so far largely failed. Competition and investment protection is not included as a negotiation topic in the Doha Development Agenda—the ninth round of multilateral trade negotiations—which was initiated at Doha, Qatar, in November 2001. These negotiations have been termed a 'development round', officially dedicated to improving trading conditions for developing countries. The Doha Declaration and the Decision on Implementation-Related Issues and Concerns confirm the Members' concerns for developing country Member States, and call for several initiatives: further market access in product areas particularly sensitive for developing countries (such as agriculture and textiles), technical and → *financial assistance* to developing countries in order to enable them to effectively participate in WTO activities, the proper implementation of their rights and obligations, and additional special and differential treatment provisions in the WTO agreements for the benefit of developing countries.

**32** As the WTO Member States declined to include new subjects in the mandate, the → *Doha Round* essentially builds upon the results of the Uruguay Round and will consolidate the current framework. It aims at reforming existing agreements and at further liberalizing trade in agriculture. This reflects, again, the revolutionarily broad scope and coverage of the results of the Uruguay Round as the WTO membership is, for the time

being, not yet ready to go far beyond those results and to enter unknown territory again. To date, the Doha Round could not be successfully concluded.

## Select Bibliography

GR Winham 'The Prenegotiation Phase of the Uruguay Round' in JG Stein (ed) *Getting to the Table: The Processes of International Prenegotiations* (Johns Hopkins University Press Baltimore 1989) 44-67.

AL Winters 'The Road to Uruguay' (1990) 100 *Economic Journal* 1288-303.

E-U Petersmann and M Hilf (eds) *The New GATT Round of Multilateral Trade Negotiations: Legal and Economic Problems* (2<sup>nd</sup> edn Kluwer Deventer 1991).

RW Jerome (ed) *World Trade at the Crossroads: The Uruguay Round, GATT and Beyond* (University Press of America Lanham 1992).

RE Hudec *Enforcing International Trade Law: The Evolution of the Modern GATT Legal System* (Butterworth Legal Publishers Salem 1993) 180-94.

TP Stewart (ed) *The GATT Uruguay Round: A Negotiating History (1986-1992)* vols 1-3 (Kluwer Deventer 1993).

G Basevi F Delbono and M Mariotti 'Bargaining with a Composite Player: An Application to the Uruguay Round of GATT Negotiations' (1994) 3 *Journal of International and Comparative Economics* 161-74.

B May *Die Uruguay-Runde: Verhandlungsmarathon verhindert trilateralen Handelskrieg* (Europa Union Verlag Bonn 1994).

JJ Schott and J Buurman *The Uruguay Round: An Assessment* (Institute for International Economics Washington 1994).

P-T Stoll 'Die WTO: Neue Welthandelsorganisation, neue Welthandelsordnung. Ergebnisse der Uruguay-Runde des GATT' (1994) 54 *ZaöRV* 241-339.

JHJ Bourgeois F Berrod and EG Fournier (eds) *The Uruguay Round Results: A European Lawyers' Perspective* (European Interuniversity Press Brussels 1995).

T Cottier (ed) *GATT-Uruguay Round: Neun Beiträge* (Staempfli Bern 1995).

P Demaret 'The Metamorphoses of the GATT: From the Havana Charter to the World Trade Organization' (1995) 34 *ColumJTransnatlL* 123-71.

H Hauser and K-U Schanz *Das neue GATT: Die Welthandelsordnung nach Abschluss der Uruguay-Runde* (Oldenbourg München 1995).

H Paemen and A Bensch *From the GATT to the WTO: The European Community in the Uruguay Round* (Leuven University Press Leuven 1995).

JH Jackson *The World Trading System: Law and Policy of International Economic Relations* (2<sup>nd</sup> edn MIT Press Cambridge 1997).

JH Jackson and AO Sykes (eds) *Implementing the Uruguay Round* (Clarendon Press Oxford 1997).

JN Bhagwati and M Hirsch (eds) *The Uruguay Round and Beyond: Essays in Honour of Arthur Dunkel* (Springer Berlin 1998).

TN Srinivasan *Developing Countries and the Multilateral Trading System: From GATT to the Uruguay Round and the Future* (Westview Boulder 1998).

GR Winham 'Explanations of Developing Country Behaviour in the GATT Uruguay Round Negotiation' (1998) 21 *World Competition Law and Economics Review* 109-34.

J Croome *Reshaping the World Trading System: A History of the Uruguay Round* (2<sup>nd</sup> edn Kluwer The Hague 1999).

TP Stewart (ed) *The GATT Uruguay Round: A Negotiating History (1986-1992)* vol 4 (Kluwer Deventer 1999).

R Senti *WTO: System und Funktionsweise der Welthandelsordnung* (Schulthess Zürich 2000).

S Ostry 'The Uruguay Round North-South Grand Bargain Implications for Future Negotiations' in DLM Kennedy and JD Southwick (eds) *The Political Economy of International Trade Law: Essays in Honour of Robert E Hudec* (CUP Cambridge 2002) 285-310.

D Luff *Le droit de l'Organisation mondiale du commerce: Analyse critique* (Bruylant Bruxelles 2004).

T Cottier and M Oesch *International Trade Regulation: Law and Policy in the WTO, the European Union and Switzerland; Cases, Materials and Comments* (Staempfli Berne and Cameron May London 2005).

MJ Trebilcock and R Howse *The Regulation of International Trade* (3<sup>rd</sup> edn Routledge London 2005).

GR Winham 'An Interpretative History of the Uruguay Round Negotiation' in PFJ Macrory AE Appleton and MG Plummer (eds) *The World Trade Organization: Legal, Economic and Political Analysis* vol 1 (Springer New York 2005) 3-25.

M Matsushita TJ Schoenbaum and PC Mavroidis *The World Trade Organization: Law, Practice, and Policy* (2<sup>nd</sup> edn OUP Oxford 2006).

R Wolfrum and P-T Stoll (eds) *Max Planck Commentaries on World Trade Law* vols 1-6 (Nijhoff Leiden 2006-08).

R Bhala *International Trade Law: Interdisciplinary Theory and Practice* (3<sup>rd</sup> edn Lexis Nexis Newark 2007).

J Chaisse and T Balmelli (eds) *Essays on the Future of the World Trade Organization* (Edis Genève 2008).

JH Jackson WJ Davey and AO Sykes *Legal Problems of International Economic Relations: Cases Materials and Text on the National and International Regulation of Transnational Economic Relations* (5<sup>th</sup> edn West Group St Paul 2008).

AF Lowenfeld AF Lowenfeld *International Economic Law* (2<sup>nd</sup> edn OUP Oxford 2008).

BM Hoekman MM Kostecki *The Political Economy of the World Trading System: The WTO and Beyond* (3<sup>rd</sup> edn OUP Oxford 2009).

AR Ziegler *International Economic Law* (3<sup>rd</sup> edn Sweet & Maxwell London 2011).

AT Guzman and JHB Pauwelyn *International Trade Law* (Wolters Kluwer New York 2012).

P van den Bossche and W Zdouc *The Law and Policy of the World Trade Organization* (3<sup>rd</sup> edn CUP Cambridge 2013).

## Select Documents

Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes (15 December 1993) in World Trade Organization *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts* (GATT Secretariat Geneva 1994) 465.

Decision on Trade in Services and the Environment (15 December 1993) in World Trade Organization *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts* (GATT Secretariat Geneva 1994) 457.

Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (signed 15 April 1994) 1867 UNTS 14.

GATT Independent Study Group 'Trade Policies for a Better Future: Proposals for Action' (27 March 1985) (Leutwiler Report) published in *Trade Policies for a Better Future: The 'Leutwiler Report', the GATT and the Uruguay Round* (Nijhoff Dordrecht 1987).

GATT 'Ministerial Declaration on the Uruguay Round of Multilateral Trade Negotiations' (20 September 1986) (1986) 25 ILM 1623 (Punta del Este Declaration).  
General Agreement on Tariffs and Trade (adopted 30 October 1947, entered into force 1 January 1948) 55 UNTS 187.  
General Agreement on Tariffs and Trade 1994 (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 190.  
Marrakesh Agreement Establishing the World Trade Organization (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 154.  
North American Free Trade Agreement (adopted 17 December 1992, entered into force 1 January 1994) (1993) 32 ILM 289.  
WTO Agreement on Agriculture (signed 15 April 1994, entered into force 1 January 1995) 1867 UNTS 410.  
WTO Agreement on the Application of Sanitary and Phytosanitary Measures (signed 15 April 1994, entered into force 1 January 1995) 1867 UNTS 493.  
WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (signed 15 April 1994, entered into force 1 January 1995) 1868 UNTS 201.  
WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (signed 15 April 1994, entered into force 1 January 1995) 1868 UNTS 279.  
WTO Agreement on Import Licensing Procedures (signed 15 April 1994, entered into force 1 January 1995) 1868 UNTS 436.  
WTO Agreement on Rules of Origin (signed 15 April 1994, entered into force 1 January 1995) 1868 UNTS 397.  
WTO Agreement on Safeguards (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 154.  
WTO Agreement on Subsidies and Countervailing Measures (adopted 15 April 1994, entered into force 1 January 1995) 1869 UNTS 14.  
WTO Agreement on Technical Barriers to Trade (signed 15 April 1994, entered into force 1 January 1995) 1868 UNTS 120.  
WTO Agreement on Textiles and Clothing (adopted 15 April 1994, entered into force 1 January 1995) 1868 UNTS 14.  
WTO *EC—Differential and More Favourable Treatment Reciprocity and Fuller Participation of Developing Countries: Decision* (28 November 1979) WT/L/4903.  
WTO Ministerial Conference Decision on Implementation-Related Issues and Concerns (14 November 2001) WT/MIN(01)/17.  
WTO Ministerial Conference Declaration on the Doha Round of Multilateral Negotiations (14 November 2001) WT/MIN(01)/DEC/1.