The majority of legislators were opposed to the ITO – though for different reasons. Those of a liberal persuasion thought the ITO was too protectionist, whereas protectionists thought it was too liberal. In 1950, as a result of the rejection of the Havana Charter in business and political circles, President Harry S. Truman decided not to submit the Charter to Congress. This decision not to ratify the Charter sealed the ITO's fate. Notwithstanding the ITO's demise, the Havana Charter continued to form the basis of the emerging world trade order.

What caused the efforts of negotiators to sink into futility? Why were the Americans not able proceed with their Hull Program in a revised format? No doubt, there is more than one reason for what happened. First, the strategy of collaboration with the United Kingdom (UK) proved to be ominous. The draft presented by the US delegation as its own proposal contained a number of exceptions put forward by the British, which the Americans, in later negotiations, were no longer prepared to espouse (balance of payments related exceptions). In addition to this, the British were not prepared to relinquish their Commonwealth preferences (which a few years later they did). Finally, demands for further exceptions by some special interests, specifically trade groups representing agricultural and transport industries, impeded a more effective liberalisation of trade.

In the course of the negotiations, it became apparent that each of these grounds had contributed to changing the initially positive American attitude to one of scepticism and eventually to one of total exasperation. Clair Wilcox, a US delegate, warned her negotiating partners about ever more far-reaching demands and exceptions, and also warned against the misguided assumption that they could make use of the protectionist provisions, whereas the US had committed itself to the principle of free trade and market access. Such disagreements repeatedly put a question mark over the Havana negotiations. Undoubtedly, the American delegation's acceptance of the ITO statutes in March 1948 came with an unarticulated reservation that Congress would have the final say in the matter.

1.3 The GATT as a 'Temporary Solution'

At the first preparatory conference in 1946, participating states decided, as a preliminary step, to regulate the reductions in customs duties and tariffs, which had been offered by the US, in a special agreement outside the ITO. It was intended to later incorporate this agreement as Part IV of the yet to be negotiated ITO statutes. There was a general consensus that, while the establishment of an ITO might take longer than anticipated, a speedy reduction of the wartime trade barriers was urgently required. Further, since it was based on the Trade Act then in force, the US offer was due to expire in June 1948. This factor significantly contributed to the early conclusion of the separate agreement. It was also decided to approach the matter by means of an agreement rather than by means of an

organisation because the Trade Act restricted the legal competence of the US Administration to the conclusion of trade treaties. Thus, it remained the prerogative of the legislature to decide whether or not to accede to the ITO. As a result of this, great care was taken in drafting the separate agreement to ensure that only those provisions that corresponded to a trade treaty were taken from the draft ITO statutes.

The first draft of this separate agreement, the General Agreement on Tariffs and Trade (GATT), emerged in Lake Success, New York, in the spring of 1947. This was followed by negotiations on tariff levels which were concluded by the end of August 1947. Conference participants exchanged their lists of exceptions, while at the same time withholding possible tariff concessions which they were only prepared to offer on a reciprocal basis to other negotiating parties. The negotiations were conducted bilaterally, on a product by product basis. Although this approach was exceptionally cumbersome, the successful outcome was aided by the fact that many countries at that time were dependent on the dollar and access to markets trading in dollars was welcomed. This was all the more desirable because of the fact that, due to their own balance of payments difficulties, affected countries were not obliged to remove import restrictions in advance, nor were they duty-bound to lower customs duties straight away. Over 100 such resolutions emerged from the negotiations and eventually, they became an inherent part of the GATT, also known as the 'Protocol of Provisional Application', which was signed by 23 states in Geneva on 30 October 1947. The original signatory states were: Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovakia, France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Rhodesia, Syria, Union of South Africa, United Kingdom and United States of America.

The Agreement entered into force on 1 January 1948 for eight states: Australia, Belgium, Canada, France, Luxembourg, Netherlands, United Kingdom and United States of America. The remaining states ratified the Agreement in the following months.

As set out above, it was originally anticipated that this provisional agreement would be incorporated into the ITO. In particular, Part II of the GATT, relating to commercial policy, resembled Part IV of the Havana Charter and it was thought that it would be re-integrated into the Charter once the ITO was established. Correspondingly, Article XXIX of the GATT, setting out the relationship between the GATT and the Charter, stipulated that Part II of the GATT was to have become inactive with the Charter's entry into force. Parts I and III of GATT would have remained active. Further, GATT signatories agreed that if the Charter was not in effect by the end of September 1949, they would then decide whether to continue, alter or expand the GATT. They also agreed that, should the Charter expire at a future point in time, the GATT would automatically be restored.

During the 1950s, after it became clear that there would be no ITO, the contracting parties held a so-called 'Review Session 1954/55' and agreed

whether it will accord the advantages enjoyed by WTO Members to non-member countries.

The big trading blocs such as the US and the EU have in the past used — and at times still use — the MFN principle as a weapon of trade policy against non-Members. For example, whether or not the People's Republic of China was accorded MFN treatment prior to its accession to the WTO in 2001 was a matter of political debate. In contrast, most small countries, such as Switzerland, accord MFN to all countries, including non-Members.

The use of the word 'immediately' in the text of the agreements indicates that the advantages, favours, etc, are to be accorded to all WTO Members at the same time and without any delays. There is no question of these being accorded to different Members at different times.

'Unconditionally' means that the advantages, favours, etc, are to be accorded to all WTO Members without further consideration in return and without any additional conditions. The reference to 'unconditionally' is a deliberate move away from the practice, as seen especially in the 1920s, where concessions were only granted to third countries if they were prepared to provide a *quid pro quo*.

3.2.2 Scope

The principle of Most-Favoured-Nation covers:

- the amendment of customs duties and charges of all kinds which arise in relation to the import and export of goods and services,
- international transfer of payments for imports or exports,
- the method of levying customs duties and other border charges,
- the administrative procedures in relation to the recording and control of cross-border movements in goods and services,
- the levying of goods and services with direct or indirect charges,
- the legal regulation of trade, sales, transport, distribution and use of imported goods and services within a national territory; and
- the regulation of trade related aspects of intellectual property rights in the form of standard procedures on counterfeiting, copyright and patents.

The two agreements on services and intellectual property do not deal with services and intellectual property rights *per se* but rather with their providers. The emphasis is on nationals of WTO Members who provide cross-border services, who for the purpose of providing a service reside in another member country, or who are represented in another member country by one means or another (for example, by an agent).

The application of the MFN principle has been the subject of many debates over the years. The question of what exactly is meant by the 'like product' terminology has been raised in many panel decisions. For example, in a 1979 case involving Spain, the Spanish authorities did not impose any customs duties on the importation of roasted coffee (from

Colombia) whereas they imposed 7 percent customs duties on unroasted coffee (from Brazil). Their argument was that roasted and unroasted coffee were not 'like products'. On the basis of existing practice, the GATT panel came to the decision that, in this case, the two types of coffee were 'like products'. According to the panel, it was not usual that the taste or the aroma of the end product distinguishes the basic item, quite apart from the fact that the end usage of the product, as a drink, was the same. On this basis, any difference in the level of customs duties levied on roasted and unroasted coffee was to be seen as a violation of 'like product' standard (see BISD 28S/111).

In contrast to this, a 1978 GATT panel report did not regard the requirement of minimum prices in relation to the import of tomato extracts as a violation of the MFN clause. The panel held that so long as the minimum prices applied to all suppliers, it was of no significance for the GATT that it was easier for centrally planned economies to comply with these measures than it was for those countries pursuing free trade policies (see BISD 25S/68).

Indeed, the 'like product' debate will likely never be resolved definitively. Depending on the interests concerned, different criteria are applied. For example, in dealing with timber, should the decisive criterion be the biological species, the intrinsic quality of the product or its end usage? Trees of the same species produce qualitatively different timber, depending on whether they are grown at a temperate sea level or in less hospitable northern mountain areas. Should the deciding factor be the type of tree, the quality of the timber or the potential usage? These questions must necessarily be addressed on a case-by-case basis (see BISD 36S/167).

3.2.3 Exceptions

The MFN principle does not apply without restrictions. The three most important exceptions to the principle's application are: the provisions allowing for the creation of customs unions and free trade areas, the choice that Members enjoy in exempting particular sectors in services trade from the MFN obligation and the granting of preferential treatment to non-industrialised countries.

The most important exception to MFN is the regulation in the GATT and GATS which provides for the creation of customs unions and free trade areas, with a view to fostering greater freedom of movement for goods and services and generally facilitating trade between participating countries (Article XXIV GATT). GATT describes a customs union as 'the substitution of a single customs territory for two or more customs territories'. This means that internal trade restrictions between the constituent territories are eliminated and substantially the same duties and other regulations are applied in respect to trade from and to third countries. In contrast, the GATT defines a free trade area as 'a group of two or more customs territories in which the duties and other restrictive

domestic products so as to afford protection to domestic production'. This broad formulation covers a non-exhaustive list of non-tariff trade barriers. The text of the Agreement goes on to establish both a restriction and an expansion of the National Treatment principle. On the one hand, the restriction arises from the application of the principle of no less favourable treatment only to 'like products'. Effectively, this means that unless imported and domestic products are deemed alike, the National Treatment rule cannot apply (the difficulty in determining at a definition of 'like product' was dealt with in the last section). However, and on the other hand, the widening of the clause is to be found in that 'moreover' internal taxes or other internal charges are not to be applied in a manner that protects domestic products. This means — as John H Jackson showed in relation to the 1948 treaty negotiations — that not only the less favourable treatment of 'like' but also of 'competing' products is prohibited. For instance, a country which does not produce oranges domestically violates GATT if it imposes such high tariffs that the consumption of oranges shrinks and consumers turn to apples (Jackson (1969), p 282).

The principle of National Treatment is also to be found in the TRIPS. The terminology used here is very similar to that used in the GATT. Specifically, Article 3 of TRIPS states that '(e)ach Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property'. This is a continuation of the basic principle of equal treatment to be found in earlier international treaties relating to intellectual property. For instance, the 1967 Paris Convention states that the nationals of a ratifying party enjoy the same protection of intellectual property rights in all contracting parties 'which the relevant laws guarantee for their own nationals either now or in the future' (SR 0.232.04). Similar wording is to be found in the 1971 revision of the Berne Convention (SR 0.232.14).

The GATS obliges the Members to accord no less favourable treatment to services and service providers from other member countries than accorded to 'like' domestic services and service providers. The phrase 'less favourable treatment' denotes that non-national service or service providers are disadvantaged competitively, that is, in their competitive position vis-à-vis domestic services or providers of services. As was seen in relation to the GATT, the question of the definition of 'like' is an extremely difficult one. Effectively, and similar to trade in goods, the term encompasses both like services and substitute or competitive services. However, as outlined above, National Treatment only applies to those services which are recorded in so-called positive lists which are drawn up by each Member and deposited with the WTO. As far as other service sectors are concerned, countries are free to treat imported services less favourably than domestic ones. According to a WTO study, National Treatment as it applies to services trade has not yet led to increased market opportunities for foreign service suppliers. Instead, it has merely

managed to maintain the status quo and perhaps to limit the introduction of new barriers in services trade. Therefore, in WTO terminology, this situation is sometimes referred to as 'stand-still bindings' (see WTO (2001), p 102 *sqq*).

National Treatment does not generally apply to laws, regulations or requirements governing the procuring by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale (for a definition of government procurement and state trading see Chapter 7.2). Further, the GATT National Treatment provisions do not prevent the payment of subsidies to domestic producers. This exception also applies as regards payments to domestic producers derived from the proceeds of internal taxes or charges applied in accordance with the provisions of GATT and to subsidies effected through governmental purchases of domestic products.

3.4 Principle of Reciprocity

A further key aspect of the WTO Agreements is the principle of reciprocity. This basic principle, which was enshrined in the original GATT during the 1940s, goes back to the 1934 US Trade Act. This 'Reciprocal Trade Agreements Act' empowered the US President to reduce tariffs on imported goods from those countries which were prepared to offer equivalent concessions to products of US origin.

Within the framework of GATT the principle of reciprocity applies to tariff negotiations (Article XXVIII^{bis}) and emergency action or safeguards (Article XIX:3). According to the GATT, negotiations on the reduction of tariff levels are to be conducted on 'a reciprocal and mutually advantageous basis'. In relation to safeguards, if tariff concessions or other GATT obligations lead to unforeseen developments against which a country wishes to utilise protective measures, these measures must be 'balanced' and 'equivalent'. The non-industrialised countries are the only ones from which the GATT does not expect reciprocity for tariff reductions or the elimination of other trade barriers (Article XXXVI:8).

Similar to the GATT, the GATS is also subject to the reciprocity requirement. According to Article XIX of the GATS, trade negotiations are to proceed on a mutually advantageous basis for all participants, with a view to 'securing an overall balance of rights and obligations'. However, account is to be taken of the state of economic development in individual countries, with particular emphasis being placed on the situation of developing countries.

The principle of reciprocity is also found in the TRIPS. According to Article 7 of TRIPS, promotion of technological innovation, transfer and dissemination of technology should take place in a manner that is mutual advantageous to producers and users of technological knowledge and that

3.6.1 GATT special provisions

In the context of the GATT, there are three types of special provisions pertaining to developing countries. Part IV of the GATT, the GSP and the 'Enabling Clause', as well as the exceptions contained in the supplementary agreements.

Part IV of the GATT, entitled 'Trade and Development', entered into force on 27 June 1966. It consists of three sections. The first section (Article XXXVI) states that the attainment of the GATT's objectives is of particular importance for developing countries and that one way of achieving this is to facilitate export trade from these countries. With this (not particularly novel) insight in mind, GATT contracting parties agreed to help developing countries attain a greater share of world trade. Therefore, the principle of reciprocity should be waved. The second section (Article XXXVII) invites industrialised countries to refrain from applying escalating tariffs and also to refrain from increasing the level of non-tariff barriers to 'the fullest extent possible' where developing countries are concerned. Section 3 (Article XXXVIII) is only aspirational in nature and lists a number of measures that are designed to improve the situation of developing countries, such as increased market access in developed countries. Overall, the substantive provisions of Part IV are weak. They do, however, manifest the general sentiment which prevailed amongst contracting parties at that time and this is reflected in subsequent developments.

As early as the 1960s, during GATT negotiations on Part IV, some developing countries, including Brazil, Chile and India, demanded that Article I be redrafted with a view to excluding the application of the MFN principle to developing countries. At the same time, the first GATT sanctioned preferential trade agreement was set up between Egypt (known then as the United Arab Republic), India and Yugoslavia. The agreement was endorsed in 1968 by way of a GATT waiver which was to expire after five years. A similar preferential trade agreement involving 16 developing countries was concluded in 1973. Meanwhile, industrialised countries such as Australia were also asking for the right to confer preferential trade privileges. In 1971, in order the to prevent a break-up of the GATT, the contracting parties yielded to the demands for preferential trade agreements by deciding to adopt the GSP model on the recommendation of the United Nations Conference on Trade and Development (UNCTAD). Within the GSP framework, there were three options for its implementation. First, MFN 'waivers' could be granted on a case specific basis for a limited period of time. Second, provisions for preferential treatment could be made permanent by incorporating them into the GATT and third, preferences could be granted on the basis of 'universal declarations'. In the end, the contracting parties chose the first option.

The selection of the 'waivers' solution soon proved unsatisfactory. Its major drawback was that it lacked predictability and legal certainty. Thus,

the Tokyo Round witnessed renewed negotiations on the GSP front. In the autumn of 1979, in spite of the opposition of some countries, the contracting parties decided to adopt the so-called 'Enabling Clause'. This clause allowed industrialised countries to by-pass the MFN obligation and grant 'differential and more favourable treatment' to developing countries. It is difficult to judge which countries have benefited from this arrangement and to what extent. Excluding petroleum and so-called 'sensitive' products, such as textiles and agricultural goods, imports by industrialised nations from countries enjoying preferential treatment only account for 2.5 to 3.5 percent of all imports. Although, as mentioned earlier, this represents only a small share of overall trade for developed countries, it accounts for 15 to 20 percent of all non-industrialised country exports (see USDA (2005), pp 14, 20).

The various GATT supplementary agreements address the needs of developing countries in different ways. For instance, in determining the application of anti-dumping measures, the Anti-dumping Agreement stipulates that 'special regard must be given (...) to the special situation of developing country Members'. The Agreement on Customs Valuation specifies that, while other industrial states must implement the agreement immediately, newly acceding developing countries enjoy a five-year transition period. The Subsidies Agreements speaks of 'special and differential treatment' of developing countries. As a final example, the Agreement on Agriculture requires all developed country Members to fully take 'into account the particular needs and conditions of developing country Members by providing for a greater improvement of opportunities and terms of access for agricultural products'.

3.6.2 GATS special provisions

Generally, the GATS aspires to provide a multilateral framework for regulating trade in services 'as a means of promoting the economic growth of all trading partners and the development of developing countries'. Further, it also seeks 'to facilitate the increasing participation of developing countries in trade in services and the expansion of their service exports including, inter alia, through the strengthening of their domestic services capacity and its efficiency and competitiveness'. In respect of least developed countries, the GATS requires that 'special priority' be given in implementing measures to facilitate their development. The preamble to the GATS also suggests that developing countries have special rights in respect of introducing new rules that regulate the supply of services within their territories. However, the many references to the needs of developing countries are largely ineffectual since the GATS grants all countries the right to limit their MFN and National Treatment obligations with respect to services trade. Developing countries have made significant use of this prerogative in the areas of maritime and overland transport, as well as in the banking, insurance, postal and business management sectors (GATT (2001), p 101 *sqq*).

consumption, the reduction of product specific subsidies by 60% and the elimination of export subsidies within 10 years.)

Following these setbacks, negotiations were restarted on the basis of proposals put forward by Luis Erneste Derbez, the then Mexican Foreign Secretary, during the Cancun Ministerial Conference in September 2003. The Derbez text reflected the joint reform proposals made by the EU and the US which tied in with previous negotiations.

The Derbez text recommended implementing market liberalisation according to a so-called 'blended formula':

- Tariff rates for a certain, but as yet undetermined, share of overall trade in agriculture were to be reduced by an average of [...] percent and by a minimum of [...] percent. The exact percentages were to be the subject of negotiations. In following the Uruguay Round approach, it was envisaged that reductions would average 36 percent with the minimum set at 10 percent (in the Uruguay Round it was 15%).
- Tariff rates for an also yet to be fixed share of trade were to be reduced in analogy to the approach evidenced during the Tokyo Round, which involved use of the so-called 'Swiss Formula'. This meant that priority would have been given to reducing high tariff rates before moving on to lower ones.
- The remaining share of overall trade was to be exempted entirely from the application of customs duties.

It is difficult to tell whether the implementation of these proposals would have led to any increased market access for traditional agriculture exporting countries such as the Cairns Group* and the USA, as well as for developing country exporters, in particular the G-20 countries, including India. Much would have depended on the level of concessions offered.

In respect of domestic support programmes, several proposals were discussed during this phase of negotiations. One of these was to reduce the level of product-specific support ('Amber box') by between 35 and 50 percent. Developed countries were only willing to reach agreement on this point so long as non trade-related support programmes remained untouched. However, the Cairns Group, as well as almost all developing countries, demanded that such support systems also be limited. A reduction in 'Blue box' subsidies (product-specific direct payments) was thwarted by the objections of both the EU and Switzerland who were demanding that 'Blue box' measures be fully exempted from any reductions. Although many developing countries had also asked for a review of 'Green box' measures, relating to direct payments on a non product-specific basis, this issue was not discussed at all.

* The Cairns Group includes 14 countries: Argentina, Australia, Brazil, Canada, Chile, Columbia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, The Philippines, Thailand and Uruguay. The group is named after the host city of their first meeting.

The problem of export subsidies also saw a wide divergence of opinion. Agriculture exporting nations demanded the complete elimination of all export subsidies and export credit facilities for the farming industry. However, the US only supported the elimination of export subsidies, not export credits. In contrast, the EU was not willing to even discuss a reduction in agricultural subsidies unless other countries reciprocated accordingly, including making concessions on the export credit side.

Even with hindsight, it is hard to gauge what chances of success these various proposals might have had. On the one hand, agriculture exporting nations were keen to continue with the process of liberalisation which had begun at the Uruguay Round. On the other hand, importing countries were not willing to make concessions in respect of the multifunctional aspects of agriculture, even if this meant that any future negotiations would likely focus on 'Green box' measures.

At the end of October 2006, the WTO Agriculture Committee disclosed that many WTO Members had not submitted data on agricultural subsidies and support programmes, as had been required of them. The negotiation were thus suspended. In April 2007, the Committee's chairman urged Members to resume talks (see Chapter 8.2).

4.3 Agreement on the Application of Sanitary and Phytosanitary Measures

Article XX(b) of the GATT, Article XIV(b) of the GATS and Article 27.2(b) of the TRIPS Agreement allow a WTO Member to deviate from their WTO commitments, in particular from the National Treatment obligation and the prohibition on quantitative restrictions (Article XI, GATT), in order to protect human life and health, as well as animal or plant life and health. In order to prevent these exception clauses from being abused, the Uruguay Round resulted in the adoption of an agreement regulating the application of sanitary and phytosanitary measures (SPS Agreement) which entered into force on 1 January 1995 for developed countries, on 1 January 1997 for developing countries and on 1 January 2000 for least developed countries.

The preamble and the first two articles of the SPS Agreement are closely related to Article XX(b) of the GATT in that they set out Members' rights to protect human life and health, as well as animal or plant life and health. This is subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members, or place foreign suppliers of goods or services at a disadvantage vis-à-vis domestic suppliers. Such measures must observe a necessity requirement, whereby such necessity is presumed to exist if and where the measures in question conform to international standards, guidelines and recommendations (necessity principle).

4.12 Agreement on Safeguards

Article XIX of the GATT deals with situations in which a Member may wish to take emergency action against imports. Specifically, in the event that the obligations and concessions entered into by WTO Members (eg tariff concessions) lead to a sudden increase in imports in the territory of one of the Members so as to cause or threaten serious injury to domestic producers of like or directly competitive products, the affected Member is entitled to withdraw concessions granted, either wholly or partially or to amend such concessions. This so-called safeguard clause is one of the most consistently contentious issues within the world trade order. As an escape clause, Article XIX is used to protect domestic industries, often in ways that suggest that the law is being misused.

At the start of the Uruguay Round, the Ministerial Declaration called upon negotiating parties to revamp the safeguard clause with a view to better define terms such as 'serious injury' or threat therefore and to clarify the rules on the role of consultations, on the duration of measures imposed, on monitoring and notification, as well as on dispute settlement. The aim of this overhaul was to strengthen the safeguard system against abuse, while allowing for relief where countries face genuine emergencies. The basic orientation of the declaration was not disputed. However, the issue of selective application of safeguard measures provided much fuel for controversy. The EU demanded that safeguard law be modified so that measures could be selectively applied against only those trading partners who disrupted trade flows. According to the EU, the observation of the MFN principle in respect of safeguards did not make sense. Other countries, especially those with smaller markets, were not willing to sacrifice the MFN obligation. They feared that by surrendering MFN, they would become exposed to the whim of larger and more powerful nations. The US thought the issue of selective application was negotiable and did not take a definitive position. The negotiations proved difficult and by the end of the Uruguay Round parties had still not moved towards a consensus. In the end, a compromise was reached which ensured that all parties could register a partial success while no party received all that they had asked for. Only a minimum of selectivity was authorised. Further, developing countries with small market shares were exempted from the application of safeguard measures. The resulting Agreement on Safeguards entered into force in 1 January 1995.

In large part, the Agreement matches Article XIX of the GATT. In respect of clarifying existing rules, the Agreement lists the conditions for imposition of safeguard measures, elaborates the investigation process and defines terms such as 'serious injury' and 'threat of serious injury'.

If and where and importing country can clearly show that its domestic industry is suffering serious injury and where any delay would jeopardise the chances for repair, that Member may take provisional safeguard measures. The duration of provisional measures may not exceed 200

days. During this period, ordinary procedures, such as consultations and ascertainment of injury or threat thereof, are to be carried out. Where serious injury or the threat thereof cannot be shown to exist, all provisional duties must be refunded.

Definitive safeguard measures may only be applied for as long as they are necessary to prevent injury, but not for more than four years. If certain criteria are met, it is possible to extend the application of safeguard measures for a further four years. It is not permissible to intensify safeguard measures during the period of their application. If and where it can be shown that 'imports from certain Members have increased in disproportionate percentage in relation to the total increase of imports' and that such imports are causing serious injury, a departure from the MFN principle is allowable. This means that relevant safeguard measures can specifically target the exporting countries concerned. Such selectivity is not allowable where there is only a threat.

No safeguard measures may be applied against a developing country whose share of imports of the product in question is less than 3 percent, so long as the combined share of all such countries is less than 9 percent of all imports of the relevant product.

Article 11 of the Agreement is of special significance since it seeks to prohibit voluntary restraint measures. WTO Members have pledged not to institute or maintain what are often termed 'grey-market measures'. These include voluntary export restraints, voluntary restraint agreements, orderly market arrangements, compulsory import cartels or other such measures on the export or import side. It was further agreed to phase out existing bilateral measures of this kind by the end of 1998. However, to date this so-called 'clean-up' exercise is still in progress and given the protracted and complex nature of the process, an end is not in sight.

4.13 Other Agreements

For the sake of completeness it should be mentioned that three further supplementary agreements, which have been terminated in the meantime, were approved during the Uruguay Round.

Two of these, the International Bovine Meat Agreement and the International Dairy Agreement had been drafted during the Tokyo Round and were incorporated into the WTO framework as plurilateral agreements. However, due to their ineffectiveness, they were repealed at the end of 1997.

The Agreement of Textiles and Clothing came into force on 1 January 1995 and was intended to expire after ten years, on 31 December 2004. The aim of the Textiles and Clothing Agreement was to bring the trade in textiles within the jurisdiction of the WTO since, up to then, it had been regulated by the non-GATT Multi Fibre Arrangement (MFA). This integration process of bringing textile and clothing products under GATT rules (and eliminating quotas) took place in four stages: (1) 16 percent of products to be brought under GATT rules before 1 January 1995, (2) a