

Forfás



World Trade Organisation
Negotiating Objectives for
Irish Enterprise Policy

*A report by Forfás to the Minister for
Enterprise, Trade and Employment*

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Foreword

The World Trade Organisation (WTO) has had a subtle but profound effect on Irish industrial development over the last three decades. As the body that sets the rules of international trade, the WTO has regulated and progressively liberalised trade relations between Ireland and nearly all countries outside the EU, including the United States and most of Latin America and Asia. This has been a key factor behind Ireland's economic transformation over the last four decades. Since 1973, total Irish trade in goods and services has increased from €1.65 billion (IR£1.3 billion), equivalent to 81 per cent of GDP in that year, to €207.9 billion in 2001 (182 per cent of GDP). Over the same period, average Irish incomes (as measured by per capita GNP) moved from just over 60 per cent of the EU average to over 103 per cent, providing strong evidence that international trade liberalisation has been good for Irish living standards.

There are now few businesses in Ireland of a significant scale that do not trade in goods and services with foreign customers or suppliers. Moreover, it should be recognised that the emergence within Ireland during the 1980s and 1990s of industry clusters dominated by foreign multinational companies involved in electronics, chemicals, pharmaceuticals and other goods was partly dependent on the development of WTO trade disciplines to open up foreign markets in the relevant sectors. The ability of smaller Irish-owned companies to export outside the EU market, and particularly to the USA, has improved considerably because of multilateral trade deals. Irish consumers have also benefited from WTO trade liberalisation through a wider choice of goods and services and the lower prices that go with increased import competition.

WTO rule making as part of the WTO's latest "Doha Development Agenda" set of trade liberalisation negotiations, launched in November 2001, will continue to shape the international regulatory landscape in which Irish enterprise development takes place over the next decade. WTO rules that help improve the functioning of markets in a fair, open and transparent manner are of fundamental importance to small open economies such as ours with substantial two-way flows in trade and investment. Ireland's efforts to position itself as a global hub in certain tradable services, digital content and other "new" industries, for example, will partly depend on the development of "seamless" global marketplaces in these industries as a result of WTO rule making. Achieving adequate returns on growing Irish public and private investment in research and development will be supported by an effective multilateral system for the protection of intellectual property rights.

This is a crucial period in the multilateral negotiation process. Preparations have already begun for the next Trade Ministerial in Mexico, to be held in September 2003. This will, in effect, be a mid-term Ministerial that will take stock of progress and give an overview of what has been accomplished at that stage in areas where negotiations have been launched. Negotiations to follow will concentrate on the achievement of the Doha Declaration deadline, which has targeted January 1, 2005 for the conclusion of the multilateral trade round.

This report by Forfás to the Minister of Enterprise, Trade and Employment, whose department acts as the lead negotiator on trade policy issues for Ireland, provides an independent view of the broad "strategic" negotiating priorities for Ireland from an enterprise policy perspective. In addition to offering a broad negotiating framework for Irish and EU trade negotiators, the report also aims to raise awareness of WTO issues, and Irish negotiating priorities, among other government departments and enterprise development agencies, as well as industry, academia and international bodies.

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Glossary of Abbreviations and Terms

Bound Tariff Rates and Applied Tariff Rates - during previous rounds of tariff negotiations, WTO members "bound" their import tariffs to maximum levels as published in each country's Schedule of Commitments. Under the WTO's legal agreement, countries have committed not to raise import tariffs above the "bound rates". In the period since the Uruguay Round of negotiations, which ended in 1994, many countries have since implemented autonomous liberalisation of trade by lowering their tariffs on imported goods. The new rates operated in practice are termed "applied rates". Often, therefore, bound rates listed in the WTO agreements do not reflect actual trading conditions. From an Irish, it is important that this reality is reflected in the WTO negotiations with applied rates used as the basis for further reductions.

European Union (EU) - dating from the European Coal and Steel Community founded in 1952, the European Union (EU) comprises, among other things, a single trading block (the Single European Market) made up of the following 15 countries: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, the United Kingdom.

Foreign Direct Investment (FDI) - a category of international investment that, based on an equity ownership of at least ten per cent, reflects a lasting interest by a resident of one economy (the direct investor) in an enterprise resident in another economy (the direct investment enterprise). Using this criterion, a direct investment relationship can exist between a number of affiliated enterprises whether the linkage involves a single chain or a number of chains.

General Agreement on Trade in Services (GATS) - the WTO's General Agreement on Trade in Services (GATS), which came into force in 1995, sets out a framework of legally binding rules governing the conduct of world trade in services. It has been formulated to ensure that government regulations and other measures affecting trade in services are fully transparent, and secure the progressive removal of measures that discriminate against foreign service suppliers.

General Agreement on Tariffs and Trade (GATT) - since its inception in 1947, the GATT, now superseded by the World Trade Organisation (WTO), has been the negotiating forum for the liberalisation of trade in goods. The lowering of tariff barriers to trade has been a central feature of every round of GATT negotiations since 1947. Since the inception of the WTO, the GATT now refers to the agreement to lower tariffs and other non-tariff barriers on trade in goods.

Non-discrimination - "non-discrimination" is one of the central principles of the WTO. It has two central components: **National Treatment (NT)** and **Most-Favoured-Nation (MFN)** Treatment. National treatment means that foreign providers of goods and services are to be treated no less favourably than domestic suppliers. MFN treatment means that a host country treats foreign suppliers from one WTO member country no less favourably than suppliers from any other WTO member country.

Sectoral Tariff Elimination Agreements - this is an approach to tariff reduction that aims for the complete elimination (or harmonisation) of tariffs in a given industrial sector. It was applied during the Uruguay Round negotiations, and also more recently, in the 1997 Information Technology Agreement (ITA), which saw tariffs eliminated on trade in many IT products. The practice has been for the elimination or harmonisation to be agreed only among the WTO members with significant shares in international trade. In the ITA, it was decided that the agreement would come into effect once members or customs territories with a share of 90 per cent of world trade had joined it. The concessions are, however, applied to all WTO members.

Tariffs - The most important type of trade restriction has historically been the tariff. A tariff is a tax or duty levied on the traded commodity as it crosses a national boundary. An import tariff is a duty applied to imports at the point of entry into the home market, while an export tariff is a duty applied on a good that is exported. Tariffs are seen by the WTO and its members as a protectionist tool, as they increase the price of imported goods in the domestic market.

Technical Barriers to Trade - technical barriers to trade generally result from the preparation, adoption and application of different technical regulations and conformity assessment procedures. If a producer in country A wants to export to country B, he will be obliged to satisfy the technical requirements that apply in country B, with all the financial consequences this entails. Differences between one country and another in their technical regulations and conformity assessment procedures may have legitimate origins such as differences in local tastes or levels of income, as well as geographical or other factors. For example, countries with areas prone to earthquakes might have stricter requirements for building products; others, facing serious air-pollution problems might want to impose lower tolerable levels of automobile emissions. High levels of per capita income in relatively rich countries result in higher demand for high-quality and safe products.

A technical barrier to trade becomes unnecessary when (i) a regulation is more restrictive than necessary to achieve a given policy objective, or (ii) when it does not fulfil a legitimate objective. A regulation is more restrictive than necessary when the objective pursued can be achieved through alternative measures which have less trade-restricting effects, taking account of the risks non-fulfilment of the objective would create.

TRIPS - the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), signed by WTO members in 1994 consists of internationally-agreed trade rules for the protection of intellectual property, including copyright and related rights, trademarks, geographical indications, industrial designs, patents, layout-designs (topographies) of integrated circuits, and undisclosed information, including trade secrets.

WTO – World Trade Organisation

Executive Summary

The eight "rounds" of trade negotiations under the General Agreement on Tariffs on Trade (GATT) from 1947, culminating in the creation of the World Trade Organisation (WTO) in 1994, made substantial progress in eliminating barriers to international trade, particularly with regard to tariffs (customs duties) on trade in manufactured goods. Even still, there remain extensive tariff- and non-tariff barriers to trade, particularly in services and agriculture, but also in some industrial sectors such as clothing and textiles. Technology advancement and the globalisation of economic activity has also raised new issues of relevance to the international trading system, including the relationship between existing trade rules and electronic commerce, direct investment flows, competition law and the environment. A priority issue is how to better integrate developing countries into the global trading system. At the 4th WTO Ministerial Meeting in Doha (Qatar) in November 2001, Ireland, together with most other countries in the world, agreed to launch a new round of WTO negotiations aimed at addressing these issues, and particularly the development agenda. For this reason, the round has been titled "the Doha Development Agenda".

Rules agreed at the WTO govern Ireland's trade relations with nearly all non-EU markets, including the United States (trade with the UK and other EU countries is governed by EU laws). Accordingly, in anticipation of the launch of these negotiations, in 2001 the Department of Enterprise, Trade and Employment requested Forfás to conduct an analysis the implications of the WTO negotiations for Irish enterprise policy, to lead an industry consultation process to inform Irish industry about the negotiations and to provide an opportunity to Irish companies to make submissions on the negotiations. Drawing from economic analysis, feedback from the industry workshops and from direct discussions with companies, Irish government departments and agencies and international bodies, this report identifies Irish negotiating objectives on six key enterprise issues on the agenda of the new round of negotiations. These issues are:

1. Trade in Merchandise Goods (Section 2)
2. Trade in Services (Section 3)
3. Electronic Commerce (Section 4)
4. Trade Facilitation (Section 5)
5. Trade and Direct Investment (Section 6)
6. Protection of Intellectual Property (Section 7)

There are many other issues to be discussed at the WTO negotiations that will be of interest to Ireland, including the relationship between trade and labour rights, competition policy and the environment, how to best integrate developing countries into the global trading system and reform of the WTO's dispute settlement system. These issues are, however, outside the scope of Irish enterprise policy and have not been addressed in this report.

Neither has it been possible to foresee at this stage all the detailed industry- and country-level issues that will arise during the course of the Doha agenda of negotiations, which are likely to last at least three years. This report is designed only to highlight the broad "strategic" objectives that Ireland should pursue during the negotiations. Forfás stands ready, of course, to support the Department of Enterprise, Trade and Employment over the course of the negotiations in identifying Irish interests on all sectoral and country-level issues as they arise.

WTO Negotiating Objectives

A general principle underpinning Ireland's approach to the WTO is that, as a country with a small domestic economy, Ireland relies on a liberal global trading environment. Opening up trade with other countries stimulates Irish economic growth and higher living standards as a result of the impact on productivity of greater specialisation, economies of scale, increased competition and the diffusion of technology and investment. While few Irish manufacturing and service industries are protected by import barriers, Irish exports of goods and services to non-EU countries are frequently impeded by tariff and non-tariff barriers and discriminatory rules and regulations. Moreover, by providing a clear and liberal set of trading rules for all countries, big and small, on an equal basis, the maintenance of a multilateral trading system under the auspices of a strong WTO is clearly in the interest of Ireland and other small countries.

On balance, therefore, Ireland supports a strengthening of the multilateral trading system and an ambitious approach to the elimination of remaining barriers to trade in goods and services. We also believe that a comprehensive round of WTO negotiations involving a broad range of issues, including the relationship between trade and the environment, competition policy and direct investment, is the best way to address the challenges resulting from the globalisation process. Within this framework, key Irish negotiating objectives under each of the six main enterprise policy issues are summarised below.

Trade in Goods

With the exception of food, clothing and textiles industries, no industrial sector in Ireland has received a significant degree of protection from non-EU imports in the form of tariff or non-tariff barriers since implementation of the Uruguay Round agreements (1995). Yet, Irish merchandise exports, ranging from consumer goods to electronics and pharmaceuticals continue to face import barriers in many non-EU markets. In Ireland's view, the economic justification for tariffs (import duties) is increasingly dubious, particularly in developed and transition countries. Tariff elimination would yield significant savings in administrative costs for companies, as the myriad of customs schemes and procedures associated with duty collection would also disappear.

Accordingly, Ireland's broad objectives in the new round with regard to barriers to market access for non-agricultural industrial goods are as follows:

- ▶ Elimination of all "nuisance" tariffs (tariffs of 2 per cent or less) upon the entry into force of a new agreement (possibly 2005);
- ▶ Elimination of all tariff peaks (tariffs of greater than 15 per cent) upon the entry into force of a new agreement;
- ▶ Eventual elimination of all tariffs on industrial goods in the medium-term (by 2015);
- ▶ Improved access to the Irish and EU market for the exports of all developing countries; and
- ▶ The establishment of a WTO working group to examine non-tariff barriers to trade, particularly for electronics, pharmaceuticals and chemicals products.

With regard to food products, the WTO negotiations must also take into account the important role of agriculture not just in trade and economic development, but also in environmental management and the promotion of rural development, as well as consumer concerns with regard to food safety. Ireland will therefore pursue negotiated outcomes in the area of agriculture that are consistent with internal farm supports under the EU's Common Agricultural Policy (CAP).

Trade in Services

The development of highly-skilled, high value-added internationally-traded service sector activities is now a central feature of Irish enterprise policy. As with the 1990s, services are likely to comprise the main source of employment and economic growth over the next decade. New information and communications technologies will increase Ireland's ability to export previously non-tradable services such as media and information services. While Ireland is open to foreign service providers in most sectors, this is not the case in many non-EU countries. Ireland has an interest, therefore in opening markets world-wide to international trade in services. At the broad level, Ireland will pursue the following negotiating objectives:

- ▶ Broader and deeper market liberalisation commitments by all WTO members across all (non-public) sectors and means of supply in the General Agreement on Trade in Services (GATS);
- ▶ The development of "pro-competitive" principles with regard to the regulation of service industries to be adopted by WTO members;
- ▶ Widespread application by WTO members of WTO trade disciplines, as defined by the GATS, to trade in audio-visual services;
- ▶ Easing on foreign restrictions to the establishment of a commercial presence in overseas markets by Irish services firms (particularly in the computer services sector);
- ▶ Easing of restrictions on the temporary movement of professional services personnel to deliver services in overseas markets;
- ▶ Broader and deeper national treatment and market access commitments by WTO members in maritime services; and
- ▶ The continued exemption of air transport services from multilateral trade disciplines.

Electronic Commerce

A related aim of Irish enterprise policy in recent years has been to position Ireland as a global platform for the electronic delivery of digital content and other services. Ireland's emergence as a hub for e-business will, however, partly depend on clarification of how existing EU and global trade rules affect products delivered through electronic networks, and whether this process results in the creation of a "seamless" global electronic marketplace. This will require:

- ▶ Improvements in the quality of current WTO liberalisation commitments in all service sectors, so that the on-line delivery of digital content should not face any additional market access barriers than delivery through of the same content on physical carrier media.
- ▶ An indefinite moratorium on the application of custom duties by WTO members to electronic transmissions and e-services.

Trade Facilitation

Trade facilitation is the simplification and harmonisation of international trade procedures. Trading companies around the world, and particularly small- and medium-sized enterprises, face significant administrative and procedural barriers and costs in moving goods across borders. Indeed, the reason why relatively few Irish-owned companies, and particularly SMEs, are active players in non-EU markets has more to do with customs-related red tape than tariff barriers. The trade-related administrative burdens for enterprises that do not regularly ship large quantities of goods are often too high to make exporting worthwhile. Reducing these administrative burdens and procedural obstacles has been identified by many small and large companies in Ireland as

one of the most important potential outcomes of the new WTO round of negotiations. Accordingly, Irish negotiating WTO objectives will include:

- ▶ The negotiation of binding multilateral rules on trade facilitation under WTO auspices;
- ▶ EU ratification, as a matter of urgency, of the World Customs Organisation's revised Kyoto Convention on customs procedures.

Trade and Direct Investment

Foreign Direct Investment (FDI), whether through the acquisition of existing companies in foreign countries or the establishment of new "greenfield" operations abroad, is often the most efficient delivery mechanism for overseas sales of goods and services. Most studies suggest that outward direct investment is broadly beneficial for the "home" economy concerned, boosting domestic exports, employment and wages, and catalysing a restructuring of the domestic economy into higher value added activities. In this sense, outward direct investment is a crucial element in furthering the aims of Irish enterprise policy with regard to raising the average skill content and value-added of Irish-based enterprise activities. Accordingly, Ireland will support the negotiation of binding multilateral rules on direct investment as part of the new WTO round.

Protection of Intellectual Property

Positioning intellectual property creation as the core value-added element of range of industries here, such as computer software, digital content and biotechnology, is another central element of Irish enterprise policy. But achieving adequate returns on the growing Irish public and private investment in R&D requires an effective international system for the protection of intellectual property rights. The main principles relating to the interaction of trade and intellectual property protection were agreed as part of the WTO's "Uruguay Round" of negotiations (1995), which produced the Agreement on Trade Related Aspects of Intellectual Property (TRIPs). Although not related to the Doha agenda, WTO work in this area over the coming years will be focused on enforcement by WTO members of the existing regulations. Another key issue, also unrelated to the Doha agenda, is how the TRIPs agreement affects access to patented medicines in developing countries. Within this framework, Ireland's objectives are as follows:

- ▶ Working with the European Commission, non-governmental organisations (NGOs) and representatives of the pharmaceuticals industry here, Ireland will play an active role in finding a balanced solution that maximises the availability of patented drugs in developing countries at affordable prices, while also recognising the importance of intellectual property protection in bringing forth new medicines.
- ▶ Subject to the review of the relationship between the TRIPs and pharmaceuticals and in parallel with the wider WTO negotiations, Ireland will pursue full implementation and effective enforcement of existing agreements to protect intellectual property by our trading partners, with a particular focus on software copyright, integrated circuit designs, geographical indicators, and clothing designs and brands.

Conclusions

The EU negotiates as a single entity at the WTO. Such negotiations are carried out by the European Commission, acting in accordance with policy guidelines decided by the EU Council of Ministers, on the basis of Commission proposals. In order to ensure that the outcomes from the new WTO round of negotiations are, on the whole, acceptable to Ireland from an economic perspective, Ireland must closely monitor the development of the negotiations to ensure that EU negotiators achieve the key objectives for Irish industry set out in this report. We must also,

through active participation in EU and WTO councils, continue to play a key role in shaping the international regulatory environment to suit our enterprise development needs and policies. Over the coming months and years, we must also closely monitor developments at the WTO to quickly identify opportunities and threats for Irish enterprise policy arising out of the negotiations, and to adapt Irish enterprise policy accordingly.

Further liberalisation of global trade in agriculture will be a pre-requisite to the successful completion of the Doha Development Agenda. The current position of the EU (including Ireland) with regard to WTO negotiations on trade in agricultural goods negotiations is that any deal must be consistent with existing European farm support structures and policies, as agreed by the Agenda 2000 reforms to the Common Agricultural Policy (CAP). While it is not the purpose of this report to comment on EU agricultural policy, it is clear that WTO liberalisation on trade in agriculture, including reductions in export subsidies and import duties, will undermine the competitiveness of the Irish agri-business industry unless accompanied by further European farm policy reforms designed to reduce input prices for the food and drink industry in Ireland. This must be considered by Irish policy makers in the context of the WTO negotiations.

World Trade Organisation Negotiating Objectives for Irish Enterprise Policy

1 Introduction and General Issues

1.1 Introduction

As part of the launch of a new round of World Trade Organisation (WTO) trade liberalisation negotiations in November 2001, the Department of Enterprise, Trade and Employment requested Forfás to carry out an analysis the implications of the WTO negotiations for enterprise policy, to lead an industry consultation process to inform Irish industry about the negotiations and to provide an opportunity to Irish companies and government departments and agencies to make submissions on the negotiations. The industry and public sector bodies that participated in the consultation process are listed in Appendix 1. The Department of Enterprise, Trade & Employment requested that Forfás make recommendations on Ireland's strategic negotiating priorities from an enterprise policy perspective.

Drawing from economic analysis, feedback from Forfás-sponsored industry WTO "workshops" and the openmarkets.ie website set up to support the consultation process¹, and from direct Forfás discussions with companies, international bodies and Irish government departments and agencies, this report outlines the agreed negotiating objectives at the new WTO round of trade negotiations from an Irish enterprise policy perspective.

It has not been possible to foresee at this stage all the detailed industry- and country-level issues that will arise during the course of the Doha agenda of negotiations, which are likely to last at least three years. This report is, in contrast, designed to highlight the broad "strategic" objectives that Ireland should pursue during the round, covering six key enterprise issues:

1. Trade in Merchandise Goods (Section 2)
2. Trade in Services (Section 3)
3. Electronic Commerce (Section 4)
4. Trade Facilitation (Section 5)
5. Trade and Direct Investment (Section 6)
6. Protection of Intellectual Property (Section 7)

Clearly, there are also other issues to be discussed at the WTO negotiations that will also be of interest to Ireland, including: the relationship between trade, labour rights and the environment, how to best integrate developing countries into the global trading system, reform of the WTO's dispute settlement system and so on. These issues are, however, outside the immediate scope of Irish enterprise policy and have not been addressed in this report. Forfás stands ready to support

the Department of Enterprise, Trade and Employment over the course of the negotiations in identifying Irish interests on all detailed country- and sector-specific issues as they arise.

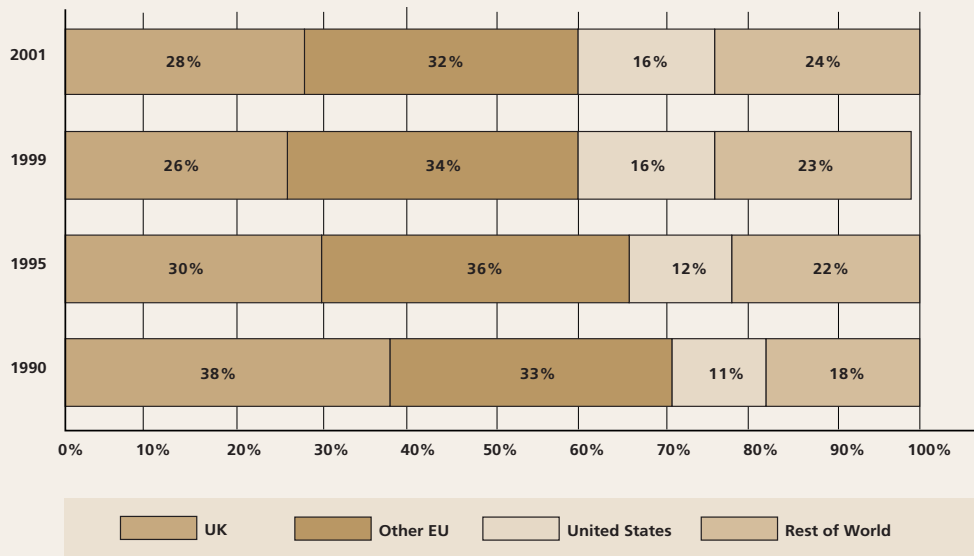
1.2 Principles Underpinning Irish Trade Policy

Ireland's approach to the WTO negotiations, as with our approach to international trade policy generally, is underpinned by a number of broad principles². These principles are as follows:

1. As a country with a small domestic economy, Ireland relies on a liberal global trading environment. Opening up trade with other countries stimulates Irish economic growth and higher living standards as a result of the impact on productivity of more efficient specialisation, economies of scale, increased competition and the spread of technologies and investment. Customers benefit from a wider choice of goods and services and the lower prices that go with competition. Businesses benefit through the development of new markets and new sources of supply. This has been Ireland's experience in the context of EU membership and previous rounds of WTO (and previously GATT) trade liberalisation initiatives.
2. As a small nation, Ireland supports the maintenance of a strong, rules-based, multilateral trading system. It is in Ireland's interests, therefore, that the WTO, which reflects the interests of both developed and developing countries, remains the primary arbiter and rule-making body in international trade issues. In the absence of a strong WTO and multilateral trading system with enforceable rules, the interests of large countries would dominate those of smaller countries. Moreover, in the absence of a strong multilateral system, countries seeking better overseas market access for national companies would pursue regional and bilateral trading agreements, leading to fragmentation in the international trading system and increased complexity and reduced predictability for trading companies.
3. One of the central thrusts of Irish trade policy, and indeed wider economic policy, during the last three decades has been to reduce our trade dependence on the UK, primarily through greater trade and economic integration into the wider continental European economy. Policy initiatives with this aim in mind have included: the decision to join the EU (then EEC) in 1973; the break with sterling in 1979, and the subsequent entry of the Irish pound into the European Monetary System (EMS); the entry into force of the Single European Market in 1992, which aimed to remove physical, technical, tariff and non-tariff barriers to trade within the EU; and the decision to enter Economic Monetary Union (EMU) in 1992, requiring the adoption of the euro as our national currency in 1999.

² For a more detailed discussion of Irish trade policy, see the "National Trade Policy Statement" by the Department of Enterprise, Trade and Employment (1998), available on the Department's website at www.entemp.ie.

Irish Merchandise Trade by Region, 1990-2001



Source: Central Statistics Office, External Trade

4. As a member of the EU, Ireland must develop positions on all international trade negotiations in co-operation with our EU partners. At the same time, we must balance our EU obligations with the importance to the Irish economy of trade and investment flows with the USA. This relationship is heavily influenced by WTO rules. Moreover, much of the trade between Ireland and the rest of the world is driven by U.S. multinationals. Ensuring a stable and open trans-Atlantic trade and investment relationship is, therefore, a key strategic economic priority for Ireland.
5. It is Ireland's belief that a comprehensive round of WTO negotiations involving a broad range of issues is the best way to address the challenges resulting from rapid and far-reaching economic changes and to effectively manage the globalisation process.
6. Irish trade policy must reflect the aspirations of the Irish people to reform the international trading system in a way that better reflects the interests of developing countries. In practical terms, this means offering greater access to the markets of the developed world for exports of particular interest to least developed countries (LDCs), adopting a flexible approach to market access reciprocity by LDCs and ensuring that LDCs have the necessary resources and skills to fully represent their interests in international trade negotiations.
7. Irish trade policy must also take into account the important role of agriculture not just in trade and economic development, but also in environmental management and the promotion of rural development and Irish culture. At the same time, Ireland recognises the need to move away from those farm support mechanisms that heavily distort international trade, often to the detriment of producers in developing countries.
8. Finally, Irish trade policy must also reflect other non-trade concerns, such as the promotion of human rights and the need to protect Irish consumers and the environment.

1.3 The World Trade Organisation – A Brief History

The World Trade Organisation (WTO) is a rules-based, member driven organisation³. Rules agreed at the WTO (through consensus-building among the member governments) govern Ireland's trade relations with nearly all non-EU markets (trade and investment with other EU countries is governed by EU laws). The WTO's principal role is to provide a set of rules that helps producers of goods and services, exporters, and importers to conduct their business across the globe. It does this by:

- ▶ administering international trade agreements;
- ▶ acting as a forum for trade negotiations;
- ▶ settling trade disputes;
- ▶ reviewing national trade policies;
- ▶ assisting developing countries in trade policy issues through technical assistance and training programmes; and
- ▶ co-operating with other international organisations.

At the heart of the multilateral trading system are the WTO agreements. These agreements are negotiated and signed by the majority of the world's nations. The current set of rules were the outcome of the 1986-94 "Uruguay Round" of negotiations which included a major revision of the original General Agreement on Tariffs and Trade (GATT), which was the predecessor of the WTO dating from 1947. While the GATT had dealt exclusively with trade in goods, the WTO agreements broadened the coverage of the multilateral trading system to include trade in services (General Agreement on Trade in Services – GATS), agriculture (The Agreement on Agriculture) and intellectual property (Agreement on Trade Related Aspects of Intellectual Property – TRIPs). The WTO agreements list individual countries' commitments to lower customs tariffs and other non-tariff trade barriers, to open up services markets and agricultural markets, and to protect the rights of intellectual property owners. These agreements are the legal "ground rules" for international commerce.

The WTO embodies reciprocal rights and obligations. Its principles of Most Favoured Nation (MFN) and National Treatment (NT) and transparency protects all WTO members, particularly smaller ones, from sudden or unfair imposition of import barriers by other states. The principle of MFN in WTO Agreements means that countries cannot normally discriminate between their trading partners. If a country grants another trading partner improved market access (e.g. a lower customs duty rate for one of its products), then it has to grant the same access to other WTO members. The principle of National Treatment (NT) means a member country giving other members the same treatment as to its own national firms. For example, imported and locally produced goods should be treated equally, at least after the foreign goods have entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents.

The result of these principles is assurance. Consumers and producers know that they can secure supplies and a greater choice of finished products, components and raw materials. Exporters know that foreign markets will remain open to them. In short, these agreements help producers of goods and services, exporters, and importers to conduct their business across the globe.

³ For detailed information about the WTO, see the WTO's website at www.wto.org.

1.4 The "Doha Development Agenda"

The Uruguay Round and the previous seven rounds of trade negotiations under the GATT since 1947 made substantial progress in eliminating barriers to international trade, particularly with regard to tariffs (customs duties) on trade in industrial goods. Even after implementation of Uruguay Round commitments, however, there remain extensive tariff- and non-tariff barriers to trade, particularly in services and agriculture, but also in some industrial sectors such as clothing and textiles. The globalisation of economic activity has also raised new issues of relevance to the multilateral trading system, including the relationship between WTO rules and e-commerce, direct investment flows, competition law and the environment. A priority issue is how to better integrate developing countries into the global trading system. At the 4th WTO Ministerial Meeting in Doha (Qatar) in November 2001, Ireland, together with most other countries in the world, agreed to launch a new "round" of comprehensive WTO negotiations aimed at addressing these issues, and particularly the developmental agenda. For this reason, the new round has been titled "the Doha Development Agenda".

1.5 The WTO and Irish Enterprise Policy

Enterprise development policy in Ireland must operate within a wider regional and international economic and regulatory environment, which has a large impact on the policies and models that can be applied here. EU state-aid rules, for example, have imposed a significant constraint on Irish tax and fiscal supports for industry. With the exception of the EU, no other supranational or international body has a greater influence on Irish enterprise development than the WTO. While the impact of WTO negotiations on Irish agriculture has been well flagged, awareness of the WTO's influence on Irish companies and industrial development has been more limited. This may reflect the co-occurrence of WTO liberalisation and the development of the EU single market (which received more attention in Irish media and policy making circles), as well as the relatively limited direct interface between the WTO and Irish industry and government officials (the European Commission conducts WTO negotiations on behalf of Ireland and other EU member states – see Section 1.6).

Nonetheless, WTO rule-making has had a quiet but profound effect on Irish industrial development over the last three decades. As the body that sets the rules of international trade, the WTO has regulated and progressively liberalised trade relations between Ireland and nearly all countries outside the EU, including the United States and most of Latin America and Asia. Between 1973 and 2001, the share of Irish merchandise trade conducted with non-EU countries grew from 26 per cent to 40 per cent, more than outpacing the growth of Irish trade with non-UK EU countries. It could be argued, therefore, that multilateral trade liberalisation has made a more significant contribution to Irish trade diversification away from the UK – a long-standing goal of Irish trade policy - than EU integration.

Ireland's FDI-led export-oriented development model has also depended on a liberal trading environment. The emergence within Ireland during the 1980s and 1990s of MNC-dominated industry clusters in the manufacture and distribution of electronic, chemical, pharmaceutical and other goods has depended heavily on the development of trade disciplines to open up foreign markets in the relevant sectors, both within the European Union and globally under the auspices of the WTO. Increasingly, overseas (and particularly U.S.) MNCs establish in Ireland not just to service the western European market, but also the Middle Eastern, African, U.S. and even Asian markets. More recently, Ireland's emergence as a "hub" for transatlantic trade in industrial goods would not have occurred in the absence of WTO-led elimination of most tariff-barriers to trade between the EU and the USA, particularly in electronic and pharmaceuticals.

As was the case in past decades, WTO rule making as part of the Doha Development Agenda will continue to shape the international regulatory landscape in which Irish enterprise policy operates. Ireland's efforts to position itself as a global hub in certain tradable services, digital content and other "new" industries will, in part, depend on the development of "seamless" global marketplaces in these industries as a result of WTO rule making. Encouraging more Irish SMEs to trade outside the EU market may depend on WTO-led simplification and harmonisation of international trade procedures and data requirements. Removing barriers to outward investment by the growing cohort of Irish multinational companies will be influenced by the WTO's ability to extend the multilateral trading system to incorporate foreign direct investment flows. Achieving adequate returns on growing Irish public and private investment in research and development will be supported by an effective multilateral system for the protection of intellectual property rights.

It is clear therefore that Ireland must, through active participation in EU and WTO councils, continue to play a key role in shaping the international regulatory environment to suit our enterprise development needs and policies. We must also closely monitor developments at the WTO to quickly identify opportunities and threats for Irish enterprise policy arising out of the negotiations, and to adapt Irish enterprise policy accordingly.

1.6 WTO Negotiating Modalities and Dynamics

In accordance with the Common Commercial Policy of the EU (Article 133), the EU negotiates as a single entity at the WTO. Such negotiations are carried out in Geneva (at the WTO headquarters) by the EU Commission, acting in accordance with policy guidelines decided by the EU Council of Ministers, on the basis of Commission proposals. These proposals are developed by a number of committees, which include the Trade Committee (known as the Article 133 Committee). Ireland participates actively in these fora with a view to ensuring that our economic interests are promoted in the development and implementation of the Common Commercial Policy. In addition, officials based at Ireland's Permanent Representation to the EU maintain ongoing contact with Commission officials on trade issues of particular relevance to Irish business.

During the Uruguay Round of negotiations, agriculture was the priority issue for Irish negotiators, and in particular protecting the support programmes available to Irish farmers under the EU's Common Agricultural Policy (CAP). While agriculture and agri-business are still key sectors for the Irish economy, particularly in regional and rural locations, the dramatic growth of, and structural changes to, the economy over the last decade mean that other issues are of at least equal importance from an economic perspective. These include facilitating greater access for Irish SMEs to non-EU markets, promoting the creation of tradable service industries, ensuring adequate global protection of intellectual property developed in Ireland and eliminating the remaining tariff and non-tariff barriers to Irish exports of electronics and pharmaceutical products.

In recent years, EU farm policy has come under attack on a number of fronts, particularly with regard to its depressing effect on world market prices for farm goods, to the detriment of many developing countries. It is now clear that ongoing reform of the CAP to address this issue, as well as to provide greater access to the EU market for farm goods from both developing and developed economies, will be a pre-requisite to the successful completion of the Doha Development Agenda. Irish negotiators must ensure that such reforms are structured in a way that maintains the competitiveness of Irish agribusiness, and provides adequate time and mechanisms for Irish farmers to transition to new production methods. But it is important to consider such compromises in the context of the potential benefits from the new round to Irish-owned internationally traded manufacturing and service sectors.

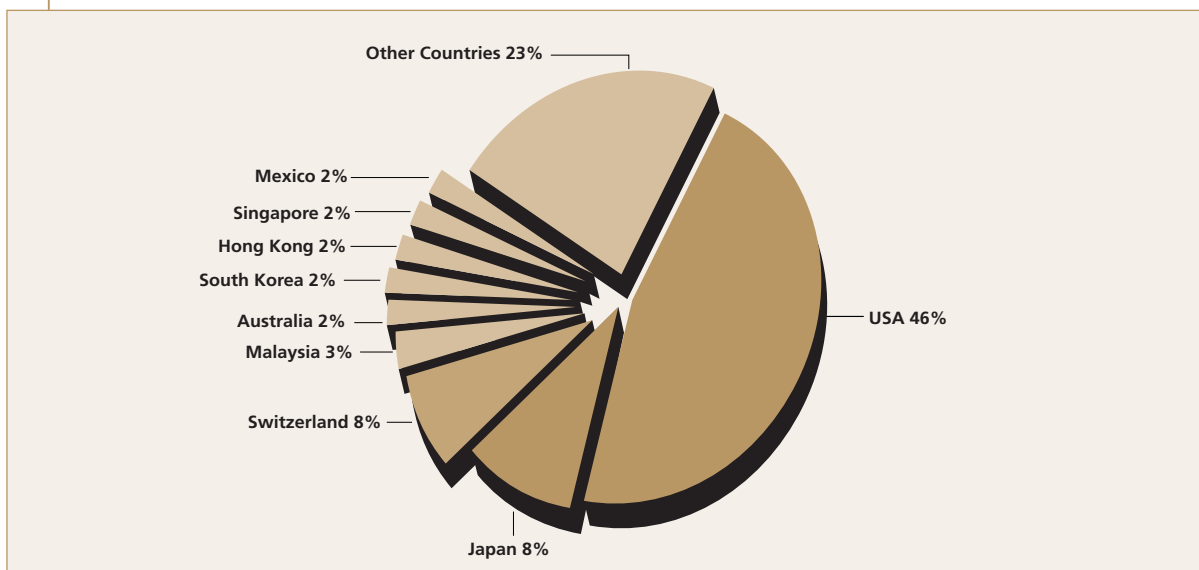
In order to ensure that the outcomes from the new round are, on the whole, acceptable to Ireland from an economic perspective (particularly given the possible compromises required on farm policy), Ireland must closely monitor the development of the negotiations to ensure that EU negotiators achieve the key objectives for Irish industry set out in this report. Clearly, Ireland's economic size limits our ability to influence on all issues on the WTO's agenda. Accordingly, this report sets out only the priority WTO issues and objectives from an Irish enterprise development perspective – issues where Ireland may need to drive the agenda at EU councils. But we must also be aware of our economic interests on all the main WTO issues as the negotiations progress.

2 Trade in Merchandise Goods

2.1 Background

Total trade in goods between Ireland and non-EU countries measured €46.2 billion in 2001. Much of these comprise electronics exports to Asia, America and the Middle East, as well as pharmaceutical exports to the USA. Exports of food and drink products to North America, the Middle East and Asia are also significant.

Share of Irish Non-EU Merchandise Exports by Country (2001)
(Total = €34.4 billion)



Source: CSO, External Trade

The most common barrier to this trade in goods between Ireland and non-EU markets is still the tariff – a tax or duty applied to imports at the point of entry into the domestic market. The succession of global trade Rounds, which took place under the aegis of WTO's predecessor, GATT, have resulted in the reduction of tariffs from an average of 38 per cent on the establishment of GATT in 1947 to an average of just four per cent today, after the Uruguay Round of negotiations.

We are, however, well short of tariff elimination, and almost all countries, including Ireland, still apply some tariffs on imported goods (Ireland applies a common tariff regime with other EU members). Although tariffs in the EU are generally low, Irish and other EU producers frequently face import tariffs of over 40 per cent on exports to many non-EU markets.

In addition to tariff barriers, many non-tariff barriers also act as impediments to goods exports from Ireland to non-EU countries. Also known as "technical barriers to trade", these refer to technical regulations, standards or procedures in such a way as to restrict international trade. These include unfair licensing regimes, costly labelling requirements, discriminatory rules of origin, excessive product safety standards and complex certification procedures. A number of WTO agreements (most notably the Agreement on Technical Barriers to Trade) have already sought to eliminate many such non-tariff barriers.

2.2 Broad Negotiating Objectives for Trade in Goods

Tariff Barriers

As a general rule, Ireland supports the view that the potential benefits from tariff elimination for non-agricultural industrial goods in terms of increased trade and employment and lower prices strongly outweigh the benefits of tariffs to protected industries, for both developed and developing countries. This is particularly true for Ireland and other EU countries – with the exception of clothing, textiles and leather industries, no industrial sector has received a significant degree of tariff protection from non-EU imports since implementation of the Uruguay Round agreements. As the globalisation of manufacturing and production continues, the economic justification for tariffs is increasingly dubious, particularly in developed and transition countries. Tariff elimination would yield significant savings in administrative costs for companies, as the myriad of customs schemes and procedures associated with duty collection would also disappear. Reductions in duty would be trade enhancing and thus would be of benefit to all WTO members.

Accordingly, Ireland's broad objectives in the new round with regard to tariff barriers to market access for non-agricultural industrial goods should be as follows:

- ▶ Elimination of all nuisance tariffs (tariffs of two per cent or less) upon the entry into force of a new agreement (possibly 2005);
- ▶ Elimination of all tariff peaks (tariffs of greater than 15 per cent) by developed and advanced developing countries upon the entry into force of a new agreement;
- ▶ Early participation by all WTO members in existing sectoral tariff elimination ("zero for zero") agreements, particularly in the pharmaceuticals, information technology and spirits sectors (see below). The "zero for zero" approach to tariff elimination could be usefully applied to other industrial sectors;
- ▶ Reduction and, where possible abolition, of discrepancies between bound and applied tariff rates;
- ▶ Improved access to the Irish and EU market for the exports of all developing countries, and the elimination of tariffs on all imports from the Least Developed Countries (LDCs); and
- ▶ Eventual elimination of all tariffs on industrial goods in the medium-term (by 2015).

Non-tariff barriers

As discussed earlier, many non-tariff barriers (technical regulations, standards etc.) also act as impediments to goods exports from Ireland to non-EU countries. A number of WTO agreements (most notably the Agreement on Technical Barriers to Trade) have already sought to eliminate many such non-tariff barriers. It is Ireland's objective that the next round of WTO negotiations should expand on this agreement in order to address the non-tariff barriers of greatest nuisance to companies exporting from Ireland. This should include the establishment of special WTO working groups to examine and eliminate to the greatest extent possible non-tariff barriers to trade in pharmaceuticals, software and electronics.

In addition to tariff and non-tariff barriers to market access, other key issues for Irish manufacturing companies under negotiation in the new WTO round include Trade Facilitation (see Section 5), the relationship between Trade and Direct Investment (see Section 6) and the Protection of Intellectual Property Rights (see Section 7).

Sectoral Issues

In addition to Ireland's broad negotiating objectives on trade in goods, we have also identified a number of more detailed negotiating issues and objectives for the following manufacturing sectors:

- ▶ The Food and Drinks Sectors (Section 2.3)
- ▶ The Chemicals and Pharmaceuticals Sectors (Section 2.4)
- ▶ The Electronics and Engineering Sectors (Section 2.5)
- ▶ The Clothing and Textiles Sectors (Section 2.6)

2.3 WTO and the Food and Drinks Sectors

2.3.1 Background

The food, drinks and tobacco (FDT) industry in Ireland makes a substantial contribution to national output, employment and exports. Gross value added in the FDT industry was estimated at €5.9 billion in 2000, equivalent to 16.1 per cent of total industrial value-added and 6.5 per cent of total GDP in that year⁴. Approximately 44,000 people were directly employed in the FDT sector at the end of 2000 (equivalent to around 18 per cent of total industrial employment), mostly in the meat, dairy, bread and drink sectors. Moreover, as the FDT industry is highly reliant on Irish raw materials (farm output), the industry makes a large additional contribution to farm employment, and is a particularly important source of regional employment (two-thirds of FDT companies are located outside the east coast region). The Irish food wholesale and retail sector is also a significant employer.

The FDT industry in Ireland is dependent on export markets. According to the CSO, over 51 per cent of total FDT output was exported in 1999. According to more recent data from the Department of Agriculture, Food and Rural Development (DAFRD), total exports (including export refunds on the EU Common Agricultural Policy – see below) of FDT products measured €7.5 billion in 2000. Of this, 19.3 per cent was accounted for by dairy exports, 18.3 per cent by beef exports, 11.4 per cent by drink exports and the remainder by other meats, arable crops, fruit and vegetables, processed foods, tobacco, sugar and other foodstuffs. The UK remains the major market for Irish agri-food exports, accounting for nearly 36 per cent of the total in 2000, with other EU countries accounting for 31 per cent. Exports to non-EU countries (including the value of export refunds) accounted for the remaining 33 per cent of total Irish agri-food exports in 2000.

2.3.2 WTO and the Food and Drinks Sectors

"Without prejudging the outcome of the negotiations we commit ourselves to comprehensive negotiations aimed at: substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade distorting domestic support" ...WTO Ministerial Declaration, Doha, November 2001

After successive GATT and WTO trade liberalisation rounds, trade in most merchandise goods categories, such as electronics, pharmaceuticals and other manufactured items, is now largely unhindered by tariff barriers or export subsidies. Trade in FDT products remains, however, heavily distorted by high levels of import protection, domestic supports and export subsidies, particularly in developed countries. Irish production and trade in FDT products is heavily influenced by the EU's Common Agricultural Policy (CAP) – a system of production quotas, import tariffs, market

⁴ This does not include the contribution of primary producers in the farming sector.

price supports, export subsidies, food safety and environmental standards and direct payments, designed to promote European food security, protect the incomes of rural farmers and address non-producer concerns relating to food safety, regional development, animal welfare and environmental protection.

Although agriculture had, in theory, been covered by the GATT since its inception in 1947, the rules governing international trade in FDT products effectively came under the multilateral system only in 1995. In that year, the WTO's Agreement on Agriculture, negotiated through consensus among its members as part of the 1986–94 Uruguay Round, came into effect. The Agreement covers not only basic agricultural products such as wheat, milk and live animals, but also the products derived from them such as bread, cheese, butter and meat, as well as all processed agricultural products (chocolate, sausages, wines, spirits and tobacco products). It included specific commitments by WTO member governments to improve market access and reduce trade-distorting subsidies in agriculture, and made more operationally effective rules and disciplines in these areas. These commitments were implemented over a six year period (10 years for developing countries) that began in 1995. Clearer rules for sanitary and phytosanitary measures were also introduced to counter unjustified use of food safety and animal and plant measures to circumvent stricter rules on import access⁵.

While the Agreement was a significant first step towards creating and formalising disciplines to barriers to trade in FDT products, the practical results in terms of improved market access were limited. As part of the 1995 Agreement on Agriculture, therefore, WTO participants also agreed to resume negotiations for continuing the liberalisation process. These talks commenced in 2000, and have now been incorporated into the broader WTO negotiating agenda set at the 2001 Ministerial Conference in Doha. WTO members have to agree the rules on the basis of which they will make new commitments by March 2003, and countries must then submit liberalisation offers by the 2003 Ministerial Meeting in Mexico in September. Insofar as the Irish FDT industry is concerned, the most relevant element of the WTO's Doha "Declaration" was the commitment to comprehensive negotiations in the agriculture sector aimed at:

- ▶ Substantial improvements in market access (further reductions in import tariffs);
- ▶ Reductions, with a view to phasing out, all forms of export subsidies; and
- ▶ Substantial reductions in trade-distorting domestic support.

While the Declaration affirms that the commitment by WTO members to these aims does not prejudge the eventual outcome of the negotiations, it seems clear that this new round of negotiations is likely to have a much greater impact on the FDT sector in Ireland than the Uruguay Round.

The current position of the EU (including Ireland) with regard to WTO negotiations on trade in agricultural goods negotiations is that any deal must be consistent with existing European farm support structures and policies, as agreed by the Agenda 2000 reforms to the Common Agricultural Policy (CAP). While it is not the purpose of this report to comment on EU agricultural policy, it is clear that WTO liberalisation on trade in agriculture, including reductions in export subsidies and import duties, will, if carried out in isolation from reform of domestic agricultural policy, undermine the competitiveness of the Irish agri-business industry. Reflecting the higher prices of raw materials (particularly for dairy, sugar and meat products) within the EU as a result of the CAP, many Irish and other EU food and drink processing industries currently rely on import tariffs and export refunds to compete with non-EU producers. The industry's reliance

⁵ *The WTO Agreement on Sanitary and Phytosanitary (SPS) Measures sets out the basic rules for restricting imports on food safety and animal and plant health standards. It allows countries to set their own health and safety standards, but requires that regulations must be based on science and be applied only to the extent necessary to protect human, animal or plant life or health.*

on import protection and export refunds will only diminish when internal EU prices for raw materials are brought into line with world levels.

From the perspective of Irish enterprise policy (value-added food and drink production), therefore, a key principle underpinning Ireland's approach to the negotiations should be that further WTO liberalisation on trade in agriculture (including reductions in export subsidies and import duties) must be accompanied by further European farm policy reforms designed to reduce input prices for the food and drink industry in Ireland.

2.3.3 Negotiating Objectives for the Food and Drink Sectors

Within this framework, the key objectives for Irish negotiators should be as follows:

Market Access

- ▶ As a major producer of both unprocessed (primary) and processed (value-added) food and drink products, it is in Ireland's interest to increase market access for FDT products to the benefit of all WTO members.
- ▶ Further import tariff cuts by the EU on agricultural products need to be compatible with internal price support levels agreed as part of the Agenda 2000 reforms to the CAP and the ongoing Mid-Term Review.
- ▶ Import tariff reduction commitments by the EU should be averaged to provide maximum flexibility in relation to certain specific sectors.
- ▶ Further import tariff cuts by the EU on agricultural products must also be matched by other developed countries, such as the USA and Japan, particularly in relation to imports from Least Developed Countries (LDCs).
- ▶ EU import tariff reductions on processed products must be matched by tariff reductions on imports of raw materials in order to protect the competitiveness of Irish value-added food and drink producers.
- ▶ The "safeguard clause" must be maintained to protect against unexpected import surges across all agricultural sectors⁶.
- ▶ The informal "zero-for-zero" agreements for the beer and spirits industry reached as part of the Uruguay Round, which provided for duty-free trade in beer and spirits between the EU, Japan, Canada and the USA, should be extended to include other countries⁷, particularly India, Korea, Thailand, Venezuela and Brazil.

Export Subsidies

- ▶ Export subsidies will continue to be required by the value-added food processing industry in Ireland as long as internal EU prices for beef, dairy and sugar products remain above world market levels. From an enterprise policy perspective, any WTO agreement on further reductions in export subsidies must be accompanied by further CAP reforms designed to bring internal EU prices closer to world market levels.
- ▶ In order to create a "level playing field" in agricultural export competition, WTO disciplines in export competition must be extended from export subsidies to include official export instruments used by other WTO members, such as officially supported export credits, the operations of state trading export enterprises and certain food aid transactions.

⁶ *The safeguard clause allows the EU and other WTO members to impose additional duties if the volume of imports of a certain product increases above a certain threshold, or if the price of imports of that product falls below a "trigger price".*

⁷ *The Uruguay Round produced a number of sectoral tariff elimination agreements, under which tariff rates were bound at zero by participating WTO (mainly developed) countries. In addition to spirits and beer, these so-called "zero-for-zero" agreements cover: agricultural equipment; civil aircraft; construction equipment; IT products; medical equipment; office furniture; pharmaceuticals; pulp & paper products; steel; and toys.*

- ▶ A lengthy transition period for the phase-in of further disciplines on export subsidies must be provided to allow for further restructuring and rationalisation of those Irish FDT sectors, particularly the beef industry, that are heavily reliant on non-EU markets.
- ▶ Permitted WTO export subsidy levels should be aggregated among large product groups to provide the flexibility in response to changing market conditions.

Other Issues

- ▶ With regard to the WTO Agreement on Sanitary and Phyto-Sanitary (SPS) measures, it is in the interest of Ireland, as a major exporter of food and drink products to non-EU countries, to ensure that a scientific approach to the application of restrictions/standards on food safety grounds prevails.
- ▶ Non-tariff barriers operating in non-EU countries affecting Irish value-added food and drink exporters must also be tackled. These include unnecessary labelling requirements and monopoly importation and distribution rights, restrictions on marketing services and bureaucratic customs procedures (see Trade Facilitation).
- ▶ Non-tariff barriers of particular concern to the Irish spirits industry include discriminatory taxation levels in non-EU countries and the usurpation by non-EU producers of geographical Irish indicators ("Irish whiskey", "Irish cream liqueurs" etc.) and trademarks (see Section 7 - Intellectual Property). These must also be tackled as part of a new WTO agreement.
- ▶ In identifying Ireland's interests in the new round of WTO negotiations, the needs of value-added producers in Ireland must be properly balanced with the needs of "raw material" producers i.e. farmers. In this regard, it is vital that Irish and EU negotiators at the WTO negotiations secure a continuation of the "Blue Box" exemption for the EU's system of direct payments to producers as part of production-limiting programmes. These payments are designed to compensate farmers for reductions in trade-distorting price supports, as well as to preserve the socio-economic fabric of rural communities⁸.

The Doha Development Agenda of trade liberalisation negotiations presents significant challenges to the Irish food, tobacco and drinks industry. While the negotiations surrounding the Mid-Term Review of the CAP and WTO trade liberalisation must be managed to avoid drastic and unmanageable shocks to the present pricing and cost structure of the food industry here, the long-term direction is clear – reductions in direct price supports, export subsidies and import protection.

The moves towards a simpler CAP and freer trade in agricultural goods also offer significant opportunities for some FDT sectors in Ireland. Supported by reductions in the bureaucratic burden of the CAP and in tariff and non-tariff barriers in non-EU markets and by improved access to high quality local raw materials at world market prices, companies in the value-added food processing and drinks sectors in Ireland will have the opportunity to better exploit their core advantages – proximity to high quality raw materials, high levels of innovation in production and marketing and the value of "brand Ireland" in many overseas markets. Other sectors, more reliant on import protection and export subsidies to compete in both EU and non-EU markets, may, however, face a period of consolidation.

In both cases, there is a clear need for investment in measures to support efficiency and productivity growth. For this reason, the National Development Plan 2000-2006 provides public funding of €358 million for the food industry. The provisions of the NDP have been designed to enhance the industry's competitiveness and innovative capability while at the same time ensuring that development is underpinned by attention to food safety and consumer concerns. Enterprise Ireland and Bord Bia will also continue to work with the food and drinks industry to meet the challenges of increasing competition and open markets. These agencies offer range of

⁸ *In 2001, 57% of aggregate Irish farm income was in the form of direct payments to producers.*

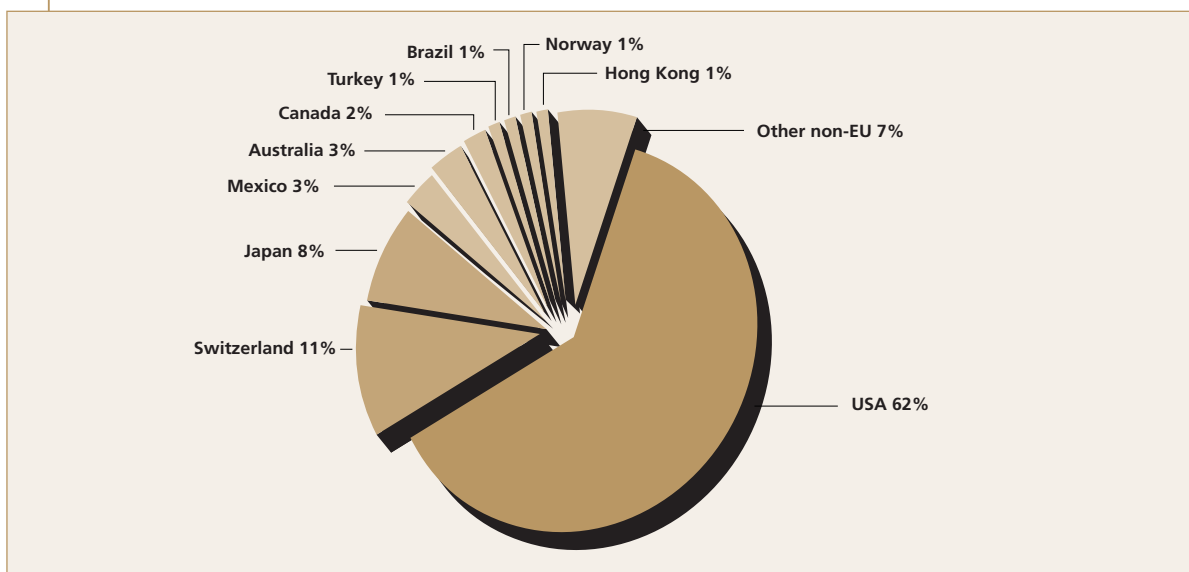
programmes to improve the capabilities of food and drink manufactures in research and development, strategic change, training, overseas marketing and brand development.

2.4 WTO and the Chemicals/Pharmaceuticals Sectors

2.4.1 Background

The Irish chemicals and pharmaceuticals sectors employ over 20,000 people in a wide range of activities such as production of organic chemicals, inorganic chemicals, fertilisers, plastics, essential oils, perfume and cleansing materials, as well as medical and pharmaceutical products. Irish exports of chemicals and related products measured €32.3 billion in the year 2001, making this one of the most significant sectors of the Irish economy, and making Ireland a significant player in European, and global, pharmaceuticals and chemicals production. Irish firms also purchased €6.1 billion of chemicals and related products from overseas suppliers. Non-EU exports in 2001 were valued at €14.5 billion, and were mostly destined for the United States, although Switzerland, Japan and other Asian countries were also significant markets.

Irish Exports of Chemicals & Machinery to Non-EU Countries, 2001 (Total Exports = €14.5 billion)



Source: CSO, External Trade

2.4.2 WTO and the Chemicals/Pharmaceuticals Sectors

Chemicals Tariff Harmonisation Agreement

As part of the Uruguay Round of tariff negotiations, 19 WTO members⁹ signed the Chemical Tariff Harmonisation Agreement (CTHA), which entered into force in 1995. Under the CTHA, participating countries agreed to reduce tariffs (import duties in the importing country) for all chemical items included in the Harmonised System Chapters 28-39 to harmonised levels of 6.5 per cent and 5.5 per cent by 2010 at the latest. In addition, the EU and the USA also agreed to eliminate tariffs for certain products. Under WTO rules, these tariff cuts by CTHA signatories were offered to all WTO members, irrespective of whether or not they participated in the agreement.

⁹ Australia, Bulgaria, Canada, Czech Republic, Ecuador, European Communities, Hong Kong, Japan, South Korea, Mongolia, New Zealand, Norway, Panama, Qatar, Singapore, Slovakia, Switzerland, United Arab Emirates and the USA.

"Zero for Zero" Pharmaceuticals Agreement

At the same time, a smaller number of, mostly developed, WTO members¹⁰ agreed to implement a "zero for zero" agreement for the pharmaceuticals industry. Under this deal, participating WTO members, accounting for over 80 per cent of global trade in pharmaceutical products, agreed to eliminate tariffs on trade in pharmaceutical products from 1995. This more aggressive approach to tariff cutting by developed countries in pharmaceuticals trade, compared with the chemicals industry, reflected the greater role of patented products and technologies in pharmaceutical production, which makes the industry less vulnerable to price competition from lower-cost countries.

Product coverage in the pharmaceuticals agreement included items classified under Harmonised System (HS) Chapter 30, or under HS headings 2936, 2937, 2939, and 2941, including active substances defined by their International Non-Proprietary Names (INN) and International Non-Proprietary Names-Modified (INN-M) of the World Health Organisation (WHO), and intermediates used solely in the manufacture of pharmaceutical products as listed in an annex to the agreement. As new INNs are regularly assigned by the WHO and as new intermediates are regularly introduced in the manufacture of innovative pharmaceutical products, participating countries agreed to review at least once every three years the product coverage of the Pharmaceuticals Agreement with a view to including new items. The first and second updates took place in 1997 and 1999 respectively.

By ensuring duty-free access to nearly all developed markets for Irish output, both the CTHA and the "zero for zero" pharmaceuticals agreement have been crucial in Ireland's development as a centre for the production and global distribution of chemicals and pharmaceutical products, particularly those destined for the U.S. market. There are now a number of other WTO-related issues, including the agenda of the recently launched "Doha agenda" of WTO trade liberalisation negotiations, that could potentially affect the development of the chemicals and pharmaceuticals industries in Ireland. These are:

Tariff Barriers in non-EU Markets. Since the last update of the product coverage of the pharmaceuticals agreement in 1999, industry has been seeking to have a further update implemented to include new INNs and pharmaceutical intermediates in use since that time. This is particularly important for many foreign-owned pharmaceutical manufacturers in Ireland, which occupy only a number of stages in the industry value chain and which therefore rely for their competitiveness on duty-free access for imports and exports of intermediate pharmaceutical products. However, bureaucratic difficulties at the European Commission have delayed the latest update. Until these new intermediates are officially included in the annex to the agreement, pharmaceuticals companies in Ireland may pay duties of up to 6.5 per cent on imports of some pharmaceutical intermediates for new products. While other mechanisms exist that offer importers temporary relief from import duties, such as tariff suspension and inward processing agreements, these are administratively costly to operate, both for companies and the relevant customs authorities.

Given the structure of the pharmaceuticals industry in Ireland, a swift resolution of this issue will be important for Ireland's competitiveness as a location for pharmaceuticals manufacturing, particularly for new innovative products. For this reason, the next update of the product coverage of the pharmaceuticals agreement should not be rolled into the broader round of WTO negotiations, which may take several years to complete, but should instead be addressed as a standalone item. Indeed, it is important that the Doha negotiations not obstruct industry-led progress in expanding the product coverage of all sectoral tariff elimination agreements¹¹.

¹⁰ *The European Communities, Canada, Czech Republic, Japan, Norway, Slovak Republic, Switzerland, United States.*

The new round of WTO negotiations should instead be used to extend the geographic coverage of duty-free treatment of pharmaceuticals trade beyond the limited membership of the "zero-for-zero" pharmaceuticals agreement. While the agreement covers around 80 per cent of pharmaceuticals trade, many "growth markets" in Latin America and Asia still levy high tariffs on imports of pharmaceuticals. The current administrative complexity of the agreement with regard to product coverage is, however, a deterrent to extended country coverage, particularly among developing countries. This complexity arises largely out of the difficulty of distinguishing between chemicals and pharmaceutical products and intermediates, many of which have dual uses. Simplification of tariff structures for trade in chemicals and pharmaceuticals is, therefore, a pre-requisite for extending trade liberalisation in these sectors.

This could be achieved by the pursuit of tariff free treatment of all chemicals products (HS Chapters 28-39) within a reasonable time frame (2010), which will therefore abolish the need for customs authorities to distinguish between chemicals and pharmaceuticals. If such an approach is not acceptable to the European chemicals industry¹², we take note of a number of other approaches being developed by Intercept¹³ that may simplify the process of updating the product coverage of the pharmaceuticals agreement, and may therefore make the agreement more attractive to other WTO members.

Non-Tariff Barriers. Market access barriers in foreign countries can also take the form of non-tariff measures, such as discriminatory domestic regulations, customs procedures and practices (see below), difficulties in product registration and discriminatory standards, all of which present difficulties to Irish exporters of pharmaceutical and healthcare products. Some progress was made during the Uruguay Round in reducing non-tariff barriers to trade, including trade in chemical and pharmaceutical products. The WTO's Agreement on Technical Barriers to Trade (TBT) seeks to ensure that technical regulations and standards, as well as testing and certification procedures, do not create unnecessary obstacles to trade. As part of the upcoming negotiations to remove market access barriers to trade in industrial products, further efforts will be made to eliminate non-tariff barriers to trade among WTO members.

2.4.3 Ireland's Negotiating Objectives for the Chemicals and Pharmaceuticals Sectors

- ▶ Ireland will press the European Commission to expedite the over-due update of the product coverage of the "zero-for-zero" pharmaceuticals agreement to include new INNs and pharmaceutical intermediates in use since the last update in 1999. It is important that this update not be rolled into the broader WTO negotiations, but instead be addressed as a standalone item.
- ▶ During the new round of tariff liberalisation negotiations, Ireland will support an extension of the country coverage of the Chemicals Tariff Harmonisation Agreement and the "zero-for-zero" pharmaceuticals agreement. This could be achieved by the pursuit of tariff free treatment of all chemicals products (HS Chapters 28-39) by all WTO members within a reasonable time frame (say 2010). If this is not possible, other industry-led approaches to simplifying the rules governing the product coverage of the pharmaceuticals agreement will be considered, thereby making the agreement more attractive to other WTO members.
- ▶ As part of the new negotiations, Ireland will press for the establishment of a WTO working group to examine non-tariff barriers to trade in pharmaceuticals and chemicals products.

¹¹ *There were, altogether, nine sectoral tariff elimination agreements implemented as part of the Uruguay Round.*

¹² *Chemicals manufacturers in developed countries tend to adopt more protectionist positions in trade negotiations compared with the pharmaceuticals industry, due to their greater vulnerability to price competition from manufacturers in lower cost economies.*

¹³ *A trade association for international pharmaceuticals industry.*

2.5 WTO and the Electronics/Engineering Sectors

2.5.1 Background

Irish exports of machinery, transport equipment and other engineering goods measured €37.9 billion in 2001, making this the most important exporting sector of the Irish economy. Most of this was accounted for by exports of office machinery and data processing machines (including PCs), telecommunications equipment and electrical machinery (including semiconductors). In addition, Irish businesses purchased €30.2 billion of machinery and transport equipment from overseas suppliers, mostly in the form of raw materials for further production and export. The Irish electronics and engineering sector includes a wide range of activities such as metalworking, manufacture of power generating machinery and equipment, general industrial machinery and equipment, computer and office machines, telecommunications and sound equipment and electrical machinery and appliances (including semiconductors).

Partly as a result of the recent technology downturn, but also reflecting rising labour costs in Ireland, the vision of many Irish electronics and engineering companies is to grow the value-added services areas of their business, while also keeping a "base" of low-volume highly engineered "niche" manufacturing activities. Rather than the traditional focus on the European market, the trend is towards the creation of niche production centres linked into a global value chain, with the global market place being the end customer. While Ireland has long enjoyed tariff free access to the European market (and more recently to the USA – see below), Ireland's emergence as a centre for the global production and distribution of niche value added engineering and electronics goods will partly depend on the elimination of remaining tariff and non-tariff barriers to trade such goods around the world.

2.5.2 WTO and the Electronics and Engineering Sectors

Included in the agenda of the recently launched round of WTO trade liberalisation negotiations are a number of issues that could potentially affect the development of the electronics and engineering industries in Ireland. These issues are:

Tariffs Barriers in non-EU Markets. Fifty-four WTO members¹⁴ (including the 15 members of the European Union) are the signatories to the WTO's Information Technology Agreement (ITA). The ITA, which came into force in April 1997, provided for the elimination by the agreement's signatories of import tariffs on an agreed set of information technology products (mostly related to industrial electronics and telecommunications equipment) by the year 2000. Some developing countries were provided extended time for the elimination of import tariffs on "sensitive" products. The ITA also provided that participants would periodically review the Agreement's product coverage in order to keep pace with technological developments. The first review commenced in October 1997. However, no agreement could be reached, and to date there has been no products added to the original coverage. Negotiations between WTO members on the product and country coverage of the ITA Agreement are likely to be rolled into the new round of WTO negotiations.

There is no agreement comparable to the ITA for the broader engineering sector, although tariffs on trade in engineering products have also fallen substantially in successive rounds of WTO (and GATT) negotiations, and may be the subject of further tariff cuts in the new round of negotiations.

¹⁴ Australia, Canada, Chinese Taipei, European Communities, Hong Kong, Iceland, Indonesia, Japan, Korea, Norway, Singapore, Switzerland (including Liechtenstein), Turkey, and the United States, Czech Republic, Costa Rica, Estonia, India, Israel, Macau China, Malaysia, New Zealand, Romania, Slovak Republic, Thailand, El Salvador, Panama, the Philippines, and Poland.

Non-Tariff Barriers. Many electronics and engineering companies also complain that non-tariff barriers to trade in electronics and engineering goods, including duplication of testing and certification requirements by various countries on IT products, and problems with import licenses, impede access to non-EU markets. There has been a seven-fold increase world-wide in regulatory standards and certifications for IT products from 1989 to 1998, which may mean hundreds of millions of euros in additional costs to consumers and companies. In response, participants to the WTO's Information Technology Agreement launched a work programme in 2000 to identify and assess non-tariff barriers to trade in electronics goods.

Engineering companies also complain that the WTO's Agreement on Technical Barriers to Trade, concluded as part of the Uruguay Round, has proved toothless in the face of continuing failure by WTO members to apply international standards and the continuing operation of non-standard conformity assessment schemes for engineering products.

"Anti-Dumping" Rules. "Dumping" is a practice consisting of selling products in an export market at prices below their normal value. When this practice causes injury to domestic producers in the country where dumped imports occur, under WTO rules the domestic industry can benefit from the imposition of anti-dumping import duties to raise the cost of the imported goods to "normal" levels, thereby eliminating the injury and restoring "fair" competition. Over the last 10 years, the use of anti-dumping measures by WTO members has increased dramatically. Some of these cases have involved the imposition by the EU and other developed countries of anti-dumping measures against cheap imports from developing countries, including imports of electronics goods (particularly semiconductors and memory chips). This has raised concerns, particularly among developing countries, that anti-dumping measures have replaced import tariffs as a new form of protectionism. As part of the agenda of the new round of WTO negotiations, WTO members have agreed to clarify and improve anti-dumping disciplines in order to take into account the needs of developing and least-developed participants.

2.5.3 Negotiating Objectives for the Electronics and Engineering Industries

With regard to the electronics and engineering sectors, the broad elements that Ireland wishes to see in the WTO negotiations are as follows:

- ▶ An extension of the product and country coverage in the Information Technology Agreement;
- ▶ A more predictable and regular process for updating the product coverage in the Information Technology Agreement;
- ▶ Removing non-tariff barriers to trade in electronics and engineering goods. This might include encouraging WTO members to use international standards such as ISO and IEC and to explore the possibilities for harmonising widely different forms of conformity assessment. In order to achieve these objectives, Ireland should support the establishment of a WTO working group to examine technical barriers to trade in the electronics and engineering industries; and
- ▶ Preserving the basic objectives, concepts and principles of the WTO's anti-dumping agreements while at the same time clarifying and improving anti-dumping disciplines in order to take into account the needs of developing and least-developed participants.

2.6 WTO and Clothing and Textiles Sectors

2.6.1 Background

International trade in textiles and clothing includes a wide range of products such as natural and synthetic yarns, woven fabrics, linen, curtains, floor coverings and all types of clothing. Total exports of Irish textiles and clothing products were valued at €858 million in the year 2001, while imports were valued at €2.5 billion. Of total exports, €236 million were destined for non-EU markets (Morocco and the USA are important markets), up from just €61 million in 1990. Of total imports, over €1 billion were sourced from non-EU markets (including Morocco, the Far East, India, Pakistan and the USA), up from just €251 million a decade earlier. Despite the increase in Irish clothing and textiles production and exports to EU and non-EU locations, total employment in the industry in Ireland has fallen from just below 23,000 in 1990 to just under 12,000 as of the end of 1999, reflecting dramatic re-structuring over this period.

2.6.2 WTO and the Clothing and Textiles Industry

"We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs.....on products of export interest to developing countries. Product coverage shall be comprehensive and without a priori exclusions".... WTO Ministerial Declaration, Doha, November 2001

Textiles and clothing trade among WTO members is governed by the Agreement on Textiles and Clothing (ATC), which came into force on January 1, 1995. This agreement provided for the progressive elimination of all quotas (quantitative limits) on trade in clothing and textiles by the USA, EU, Norway and Canada¹⁵, and their replacement by tariff only barriers (aka "customs duties" or "import taxes"), which are seen as more equitable and transparent.

The process of "tariffication" will be completed in 2005, when the ATC will expire and all quotas will be abolished, leaving the clothing and textiles trade subject to "normal" GATT rules (which applies to all other non-agricultural merchandise goods). Under current WTO commitments, the EU's average import tariff on clothing and textiles goods will also decrease to 9 per cent by 2005, with preferential treatment being applied to LDCs and other EU trading partners benefiting from the Generalised System of Preferences and the Lomé Convention with African, Caribbean and Pacific States. These initiatives have resulted in a significant increase in clothing and textiles imports into Ireland and other EU countries since 1995, particularly from developing countries such as China, India, Pakistan and South Korea.

As part of the Doha Development Agenda, Ireland and other EU members recognise the need for further liberalisation of trade in clothing and textiles products in interests of all WTO members, including developing and least-developed countries (LDCs). Indeed, as the largest exporter of clothing and textiles products, the EU is particularly keen to create an open and transparent global clothing and textiles market.

2.6.3 Negotiating Objectives for the Clothing and Textiles Industries

Within the framework of the Doha negotiations, we have identified a number of negotiating objectives of importance to the clothing and textiles industry in Ireland. These are:

Access for Irish Producers to non-EU Markets. While quantitative restrictions to trade in clothing and textiles should be abolished for all WTO members by 2005, tariff barriers will continue to

¹⁵ *These were the four WTO Members which maintained quantitative import restrictions under the Multi Fibre Arrangement (MFA), the predecessor of the ATC. The MFA was a framework of bilateral agreements or unilateral actions that established quantitative restrictions limiting imports of particular products into countries whose domestic industries were facing damage from rapidly increasing imports.*

impede Irish exports to non-EU markets. Indeed, many middle income countries (Argentina, Brazil, India, China etc.) with significant clothing and textiles exports to the EU impose tariffs of up to 40 per cent on textiles and clothing imports. Irish companies also face tariff barriers on clothing exports to developed markets, such as the USA. Tariff barriers are generally higher for finished products, such as clothing, than for textiles and other raw materials.

- ▶ As part of the new round of negotiations, Irish and EU negotiators will press other WTO members to bind all tariffs on imports of Irish and other EU clothing and textiles products at 15 per cent or below. Ireland should particularly target significant reductions in U.S. import tariffs on clothing products, which currently averages around 17 per cent.
- ▶ Irish negotiators will also press for the removal on non-tariff barriers to Irish exports in overseas markets, such as:
 - ▶ additional duties on the import or sale of products of EU origin in excess of the custom duties set out in the Agreement, or any other taxes of equivalent effect, which are higher than any such duties or taxes imposed on the production or sale of equivalent domestic goods;
 - ▶ technical regulations or standards, or conformity assessment or certification rules, procedures or practices going beyond the purposes for which they are required;
 - ▶ formal or informal minimum import price requirement, or other customs valuation rules, procedures or practices giving rise to barriers to trade; and
 - ▶ rules, procedures or practices for pre-shipment inspection that are discriminatory, non-transparent, excessively lengthy or the imposition of customs controls for the clearance of goods to shipments that have been subject of pre-shipment inspection

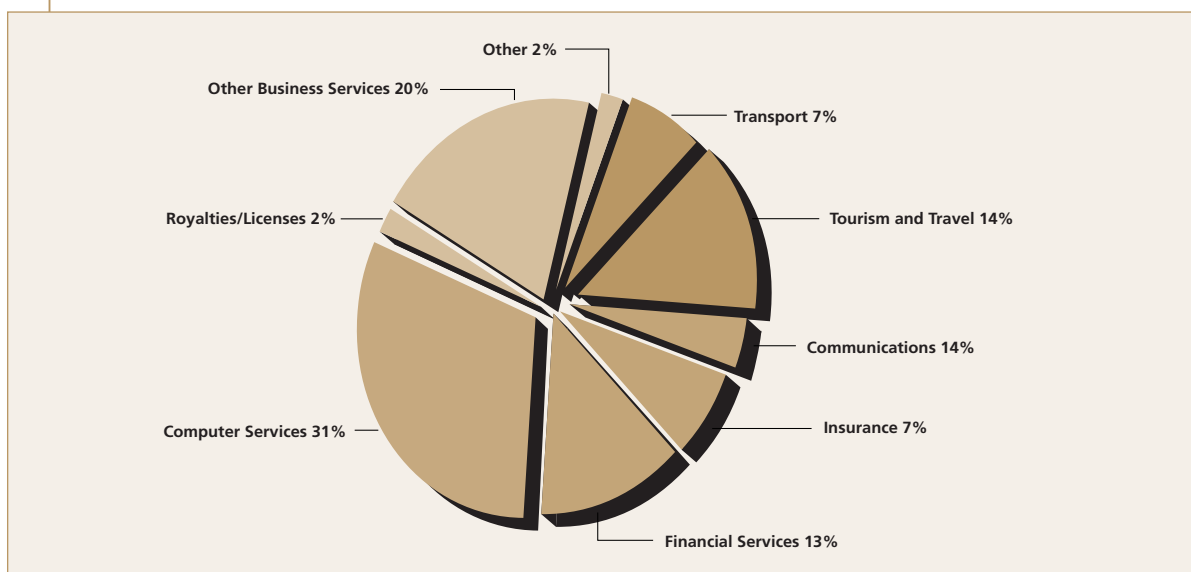
Access for Foreign Producers to Irish and EU Markets. As with other WTO members, by 2005 all EU countries (including Ireland) will have removed quantitative restrictions to imports of clothing and textiles products made by non-EU producers. At that point, the average EU tariff on textiles imports will be 9 per cent, which is considerably lower than that of nearly every other WTO member. Nonetheless, in line with the EU's commitment to offer greater access to European markets for developing countries, the EU will come under strong pressure to further reduce tariff barriers to clothing and textiles imports. While this may increase the level of competition in Irish and other EU markets for Irish-made goods, it should only be offered in return for reciprocal market access improvements for Irish made goods in the markets of other WTO members.

3 Trade in Services

3.1 Background

Service sector activities will be the main source of Irish employment and output growth over the next decade. The development of highly-skilled high value-added internationally-traded service sector activities is now a central feature of Irish enterprise policy¹⁶. Currently, Irish service exports range from computer, transport, consulting, financial and tourism services to professional legal, accounting and engineering services – industries that employ over 200,000 people and account for over 20 per cent of Irish GDP. At €9.6 billion, service exports to non-EU countries in 2001 were equivalent to over 20 per cent of our total non-EU exports. We also import vital services from non-EU countries, such as new technologies and transport and consulting services. But new information and communications technologies will also increase Ireland’s ability to export previously non-tradable services such as health, education and information services. "Digitisable" media products such as software, music and even newspapers, previously traded in physical carrier form, will increasingly leave Ireland as "online services" (see also Electronic Commerce - Section 5). It is clear therefore that Ireland has a vital interest in opening markets world-wide to international trade in services.

Irish Service Exports by Category, 2001 (Total = €22.6 billion)



Source: CSO, Balance of International Payments 2001

Although Ireland is, in most non-public services sectors, open to foreign service suppliers from both EU and non-EU countries, many non-EU countries have barriers to market development by Irish and other foreign service suppliers. While countries do not levy tariffs on imports of services (as opposed to goods), trade in services between countries is often impeded by domestic laws, regulations and procedures that discriminate against foreign suppliers of services. The most significant barriers are:

¹⁶ "Enterprise 2010: A New Strategy for the Promotion of Enterprise in Ireland in the 21st Century", Forfás, January 2000.

- ▶ barriers to commercial presence of service providers in foreign countries (limits on foreign ownership or shareholding);
- ▶ limitations on the number of foreign service suppliers;
- ▶ limitations on the number of employees allowed in foreign service operations;
- ▶ measures which restrict or require specific types of legal entity or joint venture through which a foreign service operator may supply a service;
- ▶ economic needs test for the commercial presence of a foreign service supplier;
- ▶ limits on the contract size available for foreign firms;
- ▶ a lack of transparency in the requirements for acquiring permits and licences;
- ▶ a lack of recognition for qualifications or a requirement for relevant experience in the importing country;
- ▶ discriminatory and burdensome domestic regulation; and
- ▶ barriers to the movement of skilled personnel.

These barriers affect different industries to different extents. For example, exports of Irish construction and related engineering services are often hampered by barriers to the movement of skilled personnel. Exports of Irish financial and consulting services and computer services and software are often impeded by barriers to the right of establishment in foreign countries. Often, Irish companies see these barriers as insurmountable and unavoidable, and therefore focus on more familiar markets closer to home. If clearly identified and targeted, however, the new round of WTO negotiations on trade in services could eliminate many of these obstacles and/or discriminatory or overly burdensome regulations or procedures in foreign markets.

3.2 WTO and Trade in Services

WTO rules on trade in services are still in their infancy, having come under the multilateral framework only in 1995 with the General Agreement on Trade in Services (GATS), and barriers to trade in services are much more significant than for industrial goods. This is mostly because the production and consumption of services in most countries is subject to a vast range of policy interventions which have usually been developed without regard to their trade effects because they serve other purposes (related to the environment, security of supply, quality assurance etc.). Commitments by most countries made under the GATS appear to have been confined to binding the status quo, rather than expanding already existing access opportunities. Instead, most of the negotiating efforts in services during the Uruguay Round went into "rule-making" i.e. designing the actual GATS agreement. This is because services trade liberalisation is complicated by the fact that there are a number of ways of delivering services from one country to another. According to the GATS, there are four delivery mechanisms or "modes" for services trade:

- ▶ Cross Border Supply (Mode 1): this is where services are delivered from the territory of one country into the territory of another e.g. banking or architectural services transmitted via fax or e-mail;
- ▶ Consumption Abroad (Mode 2): this is where the service is delivered in the territory of one country to the consumer of another, e.g. tourism, aircraft maintenance and repair (Team Aer Lingus);
- ▶ Commercial Presence (Mode 3): this is where a service supplier of one country supplies a service in another country by establishing a commercial presence in that country, e.g. Irish banks and software companies establishing operations in the USA; and
- ▶ Presence of Natural Persons (Mode 4): this applies to natural persons only and arises where a service is delivered through the temporary movement of personnel from one country to another e.g. Irish technology and construction professionals offering skilled services to businesses in Latin America.

The Agreement did, at least, commit members to enter further negotiations from 2000 with a view to improving the quality of liberalisation commitments by WTO members. These negotiations have now been wrapped into the wider round of WTO liberalisation negotiations launched last November at Doha. The Trade Ministers' Declaration at this Conference called on the WTO members to submit requests for specific commitments from other WTO members by June 30 2002¹⁷, and to present initial offers to other countries by March 31, 2003.

3.3 Broad Negotiating Objectives for Trade in Services

To date the EU has adopted an ambitious and liberal approach in requesting service sector liberalisation from other WTO members in non-public services sectors. Broadly speaking, the EU requests to other non-EU WTO members cover a wide range of sectors, including construction and related engineering services, distribution services, energy services, environmental services, financial services, news agency services, postal and courier services, professional services, telecommunications services, tourism services and other business services. The EU is seeking better access for European services providers in foreign markets and is seeking to secure a more transparent and predictable environment in these markets for European services providers. These requests are not designed to undermine the right of governments to regulate to achieve public policy objectives and do not seek to dismantle public services¹⁸.

In turn, slightly in excess of 22 non-EU WTO members have, by the end of 2002, addressed requests to the EU and its member states seeking improved access to the EU's services market for their services providers across all four "modes" of delivery. Initial "offers" are now being prepared by the EU in response to these requests.

The above approach is in line with the stated key EU objectives under the GATS negotiations, namely establishing comprehensive negotiations on trade in services, improving market access commitments, finalising work on unfinished business from the Uruguay Round and facilitating the greater participation of developing countries in services trade.

Ireland supports this ambitious approach. New commitments by all WTO members in the services areas identified above would help open up foreign markets for Irish and other EU service suppliers and expand services employment in Ireland. Moreover, improved WTO services disciplines might also benefit Irish consumers by increasing the level of competition in the provision of professional and other types of services in the domestic Irish market, without compromising other valid public policy objectives (such as consumer protection and prudential regulation). A number of GATS-related negotiating objectives are also listed in the Section 4 (Electronic Commerce).

Sector-Specific Issues

As discussed above, Ireland supports an ambitious approach to WTO liberalisation of trade in all non-public services sectors as part of the new round. In addition to this broad negotiating objective, we have also identified a number of more detailed negotiating issues and objectives for the following service sectors:

- ▶ The Audio-visual sector (Section 3.3)
- ▶ The Computer Services and Software Sector (Section 3.4)
- ▶ The Transport Services Sector (Section 3.5)

¹⁷ In July 2002, the European Communities presented its requests for improved market access to 109 non-EU WTO members, seeking reductions in market access restrictions and expansion of market access opportunities for the European services industry.

¹⁸ The GATS expressly provides that all WTO members can legitimately regulate economic and non-economic sectors within their territories to guarantee the achievement of public policy objectives.

3.4 WTO and Audio-visual Services

3.4.1 Background

The audio-visual services sector comprises a wide variety of sub-sectors from film, television and music broadcasting, production and post-production, animation, entertainment software and games, and Internet content creation and distribution. Digital media represents the convergence between traditional media and the growing on-line media segment, with the related telecommunications and information technology enablers. According to data from the Music Board of Ireland, the contribution of the Irish music industry alone to the economy in terms of value-added measured €551 million in 2001, equating to 11,200 jobs (on a full-time equivalent basis). Output from other audio-visual sectors is likely to have lifted total value added to closer to €1 billion and total employment to over 15,000.

Despite rapid growth in the late 1990s, the audio-visual/digital content industry in Ireland is still fragmented and in the early stages of development, particularly compared with the major international players (USA, Canada, Germany, UK, Australia). According to Enterprise Ireland, however, a number of technology developments in this sector present significant opportunities for Ireland over the coming decade¹⁹. These include:

- ▶ The convergence between the computing, media and telecoms industries;
- ▶ The roll-out of digital production and post-production;
- ▶ New opportunities for low-cost distribution through the roll-out of broadband capacity;
- ▶ The evolution of the on-line games market; and
- ▶ The roll-out of audio and video Internet-based streaming software and technologies, including the digital downloading of music and video.

These developments present opportunities for niche players to access the international audio-visual market in a way not possible before. Audio-visual companies in Ireland may have a number of advantages in this regard:

- ▶ English is the dominant language of the global audio-visual sector.
- ▶ Ireland already has a rich history in creative industries (film, music, literature).
- ▶ Ireland has excellent telecoms connectivity with the rest of the world, and particularly with the USA.
- ▶ The availability of venture capital investment for SMEs in Ireland has improved significantly in recent years.
- ▶ There are a number of tax advantages available to audio-visual content producers in Ireland.
- ▶ The availability of graduates with the multimedia, software and creative skills necessary for the audio-visual and digital content industries has improved considerably in recent years.
- ▶ The experience and skills that have been built up in the development and global distribution of computer software (management and control of intellectual property etc.) could also be applied to the audio-visual sector.

Taking into account these developments, a 1999 report to the Minister for Arts, Culture, Gaeltacht and the Islands forecast that Irish film and television output alone could potentially increase to over €635 million by the end of this decade²⁰. It also recommended that the provision

¹⁹ "ITS 2007; Opportunities for Ireland's High-Technology Internationally Traded Services Sector to 2007", Enterprise Ireland, May 2000.

²⁰ "The Strategic Development of the Irish Film and Television Industry 2000-2010" – Final Report by the Film Industry Strategic Review Group to the Minister for Arts, Culture, Gaeltacht and the Islands, August 1999

of audio-visual services must "move to a more central position in Irish industrial policy". Working with the Film Board, industry and other government bodies, Enterprise Ireland has since put in place a strategic plan for the development of the audio-visual industry over the next five years²¹. With the right policies in place in the areas of skills, finance, infrastructure and export promotion, the plan envisages Ireland becoming, over the course of the next decade, a significant global "hub" for the distribution of audio-visual services, including music, film and Internet content. With the right international regulatory environment (see below), the plan forecasts that Irish sales of audio-visual content and digital media will exceed €1 billion by 2007. IDA has also developed a digital media strategy for Ireland, targeting in inward FDI in the following areas²²:

- ▶ ELearning
- ▶ Entertainment (music, video)
- ▶ Digital Asset Management
- ▶ Digital Games

The government and its development agencies have signalled their intention to establish a strong position in audio-visual services and digital media through a number of actions:

- ▶ The Government decision to establish a dedicated Digital Media district in the Liberties area in Dublin (the "Digital Hub") with committed funding of approximately €80 million;
- ▶ The establishment of MediaLabEurope (MLE) with substantial State support; and
- ▶ The development of Webworks facilities by Enterprise Ireland.

3.4.2 World Trade Organisation (WTO) and Audio-visual Services

The creation of audio-visual and digital content is costly, and commercial success is uncertain. For companies in Ireland, the small size of the domestic Irish market means that access to international markets is necessary to help recoup production costs. Accordingly, the emergence of Ireland as a global "hub" for the distribution of audio-visual services and digital content will, in part, depend on the existence of a growing "international" market in this area.

The world-wide audio-visual sector is, however, largely fragmented along national lines. Audio-visual services and media are, in most countries, far more regulated than other industries, reflecting their potential for social, economic and cultural influence. Many countries promote domestic audio-visual content production over imports through a variety of measures, such as subsidies, tax breaks or legislation concerning broadcasting markets, content ownership and programming. In India (as in a large number of countries), for example, market access for foreign films and television programmes is formally restricted to a limited number of titles per year. In the audio-visual industry, as in other sectors, many WTO members also apply restrictions on foreign ownership of companies. The Irish Recorded Music Association (IRMA) has identified numerous measures in place in non-EU countries that restrict the international expansion of the EU, and Irish, music industry²³. It should be emphasised that Ireland and other EU countries are not without fault. The EU's "Television without Frontiers", for example, requires that programming on television channels within EU member states must comprise a majority of European productions).

²¹ "ITS 2007: Opportunities for Ireland's High-Technology Internationally Traded Services (ITS) Sector to 2007", Enterprise Ireland, 2000. It included a recommendation to develop a Dublin Digital Media District, which has been adopted by Government.

²² "Digital Media Strategy for Ireland", IDA Ireland, June 2002

²³ The International Federation of the Phonographic Industry (IFPI) Response to the EC Consultation Document on the GATS 2000/WTO Negotiations Concerning Audiovisual Services (Music and Recreational) and Cultural Services.

As mentioned earlier, the WTO's GATS agreement was established to address such barriers to cross-border trade in services. Reflecting concerns over the "cultural specificity" of the audio-visual sector in general, and the film and television industries in particular, however, only 19 out of a total 143 WTO members have scheduled "commitments" under the GATS to allow access to their domestic markets to foreign audio-visual services or content, or to treat foreign service providers in the same way as national ones. The EU and its member states were among the vast majority of WTO members to decline to make liberalisation commitments in this sector. A large number of members, including the EU, have also scheduled restrictions on the application of the WTO's "Most Favoured Nation (MFN)" treatment to the audio-visual sector i.e. they have not committed to treating the audio-visual services of all other WTO members in the same manner. Moreover, existing classifications used by those WTO members that have scheduled commitments in this area have created uncertainties over which services are covered by the liberalisation commitments.

This lack of commitments by the vast majority WTO members to "market access" or "national treatment" in the audio-visual sector, and the high number of restrictions to application of the MFN principle scheduled by WTO members, does not necessarily imply the complete closure of these markets to foreign audio-visual services or digital content. Clearly, there is considerable cross-border movement of audio-visual services and content, delivered both electronically and on physical carrier form, particularly in the areas of music, film and television. It does, however, mean that most WTO members are entitled to put in place, without prior consultation, measures that have the direct or indirect effect of restricting or excluding foreign audio-visual services or digital content from their home markets. While there are, at present, technical difficulties in blocking the cross-border delivery of audio-visual services and content across public (the Internet) and private telecommunications networks, this may not always be the case. In some countries, there are ongoing efforts to develop sophisticated technologies that will allow "filtering" of cross-border Internet traffic. More importantly, most businesses do not like to operate in environments lacking legal and regulatory clarity. The possibility of future policy changes in foreign countries may, in itself, act as a barrier to investment and market development by Irish audio-visual companies.

This actual, and potential, fragmentation of world-wide production of audio-visual services and digital content into national markets is an impediment to the development of an export-oriented audio-visual/digital content sector in Ireland. The development here of a global "hub" for the creation, distribution and management of audio-visual and digital content will require a much more widespread global application of relevant international trade disciplines. It is important to recall that the development within Ireland during the 1980s and 1990s of industry clusters in the manufacture and distribution of electronic, chemical, pharmaceutical and other goods could not have occurred without the development of trade disciplines to open up national markets in the relevant sectors, both within the European Union and globally under the auspices of the WTO.

With the launch of a new round of WTO trade liberalisation negotiations at Doha in November 2001, an important opportunity now exists for the development of an open and predictable environment for trade in audio-visual services that also recognises public concern for the preservation and promotion of cultural values and identity. Adopting international trade disciplines, as defined by the GATS, in the area of audio-visual services does not mean giving up EU and national support programmes for cultural and other audio-visual activities – the GATS is extremely flexible in this respect. The only requirement of the GATS is that members be transparent about the kind of support programmes that they offer to their national audio-visual

sectors. Moreover, it is clear from those WTO members that have already made liberalisation commitments in the area of audio-visual services under the GATS that such a commitment does not in any way require a diminution of their commitment to a strong public broadcasting service.

To date, the EU has declined to schedule GATS trade liberalisation commitments in the area of audio-visual services, and has not requested such commitments from other WTO members. This policy has acted as a major hurdle to the more widespread global application of GATS disciplines to the audio-visual sector. Many other WTO members look to the EU's stance on this issue (mistakenly) as evidence that the application of GATS disciplines would immediately threaten the future of national support programmes for culture and the arts. A change of EU policy on this issue would be a significant boost to efforts to develop an open and predictable environment for international trade in audio-visual services. It is clearly important that Ireland's approach to international trade/regulatory affairs support domestic enterprise policy efforts to make the audio-visual / digital content sectors a source of creative and skilled employment in Ireland into the future.

3.4.3 Negotiating Objectives for the Audio-visual Services Sector

- ▶ Within the context of our membership of the EU, Ireland should support the widespread application of WTO trade disciplines, as defined by the GATS, to trade in audio-visual services. Where this cannot be agreed for all audio-visual sectors, Ireland should concentrate on securing the widespread application of GATS disciplines to the music recording and distribution industry.
- ▶ At the same time, any GATS commitments by the EU in the area of audio-visual services should preserve the right of the Community and its member states to maintain support programmes for audio-visual and other cultural activities.
- ▶ As part the negotiating process, WTO members should review the different activities that constitute the audio-visual sector in order to create greater certainty as to which services are covered by liberalisation commitments.

3.5 WTO and Computer Software and Services

3.5.1 Background

Exports of Irish software and computer services measured over €11.0 billion in the year 2001, making this one of the most significant sectors of the Irish economy. In addition, Irish business and consumers purchased almost €2.0 billion of computer services and software from overseas suppliers. The Irish computer services and software sector includes a wide range of activities such as software development, customisation and implementation, installation of hardware, data processing services, database services and maintenance and repair services.

3.5.2 WTO and the Computer Services/Software Sectors

Included in the agenda of the recently launched round of WTO trade liberalisation negotiations are a number of issues that could potentially affect the development of the computer services and software industry in Ireland. These issues are:

Access to Foreign Markets. Frequently, computer services and software companies based in Ireland often face barriers to exports to, and business development in, non-EU markets. These can include tariffs (aka "custom duties" or "import duties") on imports into foreign markets of information technology goods (including software on diskettes or other physical carrier media –

see Section 2.5) or discriminatory and overly burdensome regulations or procedures in foreign markets. During the upcoming negotiations, WTO members will seek to improve the ability of their domestic computer services and software industries to access foreign markets by reducing and eliminating such barriers to trade. For the Irish computer services and software industry, of greatest significance will be:

- ▶ Reductions on tariffs on trade in information technology goods (including blank and pre-recorded IT media such as diskettes – see Section 2.5);
- ▶ Easing on foreign restrictions to the establishment of a commercial presence in overseas markets by Irish computer services firms; and
- ▶ Easing of restrictions on the temporary movement of Irish-based computer services professionals to deliver services in overseas markets.

Classification of Online Software Exports. Irish software exports once distributed on a physical medium (diskette or CD Rom) are increasingly being delivered online (over the Internet or over other public or private networks). There has been some disagreement among WTO members about whether this electronic delivery constitutes a "good", a "service", or something different. No agreement on this has been reached and the determination of the issue has been folded into the new round of negotiations.

The classification issue is potentially significant because there are different WTO rules governing trade in goods and trade in services. It can affect the customs duties that are applied to the transaction, as well as the extent to which market access commitments already made by WTO countries apply. While most WTO members have already pledged to allow unrestricted and duty-free imports of information technology goods (including software on diskettes or other physical media – see Section 2.5), fewer members have committed to allowing unrestricted imports of computer services. Where WTO members have not committed to opening their markets to imports of computer services, there is legal uncertainty regarding the electronic transmissions of software and other computer services from Ireland to those countries. Software and other digital content may, in theory, face greater barriers to entry when delivered electronically as a "service" compared to traditional software exports on a physical medium.

Even if the transmission is defined as a service, there is an added complication. Is the transmission a computer service or should the content of the software determine how it is classified - e.g. educational software under education services? The problem is equally acute for other services that are provided on-line. Should these be considered as computer services or financial/health/audiovisual services etc.? The classification may have implications for the degree to which electronic transmissions to certain WTO members are regulated. In most countries audio-visual and financial services, for example, are much more closely regulated than computer services. (See also Electronic Commerce – Section 4)

Movement of IT "Specialists". Under WTO rules, while most countries allow entry of "specialists" as intra-corporate transferees, it is not entirely clear how "specialists" should be defined. Computer companies of some WTO members have experienced difficulties in the U.S. and other markets when attempting to transfer nationals to that market that do not have a degree in engineering or computer sciences.

Intellectual Property. Another issue of key importance to the computer software sector and under discussion at the WTO is the protection of intellectual property – see Section 7.

3.5.3 Negotiating Objectives for the Computer Services and Software Sectors

With regard to computer services and the software sector, the broad outcomes that Ireland wishes to see from the new round of WTO negotiations are as follows:

- ▶ Further reductions on tariffs on trade in IT goods, including software shipped via a physical carrier medium (diskettes etc.) (Section 2.5);
- ▶ Easing of foreign restrictions to the establishment of a commercial presence in overseas markets by Irish and EU computer services firms. This would be most easily achieved by encouraging WTO countries to eliminate horizontal "Mode 3" restrictions in their GATS schedules of commitments;
- ▶ Easing of restrictions on the temporary movement of Irish-based computer services professionals to deliver services in overseas markets. This would be most easily achieved by encouraging WTO countries to eliminate horizontal "Mode 4" restrictions in their GATS schedules of commitments; and
- ▶ The promotion of, and acceptance by, our WTO partners of the EC proposal to classify Computer and Related Services at an all-encompassing two-digit level under the United Nations Central Product Classification System (CPC) 84. This would have the effect of clarifying and broadening the computer services covered by GATS liberalisation commitments.

Other recommendations relevant to the on-line delivery of computer services and software are identified in Section 4 (E-Commerce).

3.6 WTO and Transport Services

3.6.1 Background

As a small open economy at the edge of Europe, Ireland has a strong interest in lowering the cost of international transport services (marine and aviation), while preserving and improving on existing levels of security, safety and environmental protection, thereby minimising the competitive disadvantages associated with our geographic peripherality and island-status. This is particularly true given that Ireland is primarily a consumer, rather than a producer, of international transport services.

International transport costs have already fallen significantly over the last number of decades, reflecting the impact of containerisation technologies, the development of the so-called integrated carriers that provide door-to-door services by air and sea, limited deregulation in the air transport industry and, more recently, over-capacity in the shipping and aviation industries. In 1997, freight rates represented 5.3 per cent of the value of goods transported world-wide, down from 6.7 per cent in 1980²⁴. Yet recent industry consultations indicate that transport costs remain a significant barrier to trade for Irish companies. Indeed, trade liberalisation over the last few decades mean that transport margins are now far more significant to most Irish trading companies than tariff barriers.

Shipping remains by far the dominant mode of international transport of goods, and almost all of Ireland's trade (by volume) passes through the country's seaports²⁵. Most manufactured and semi-manufactured goods are shipped in containers (either on roll-on roll-off or lift-on lift-off services) on ferries between Ireland and ports in the UK and other northern European countries (mainly Rotterdam). From these ports, Irish exports are transported by road/rail to their final destinations, or are "transhipped" via deep-sea liners to North America, the Far East and elsewhere. Since the 1970s, there has been no deep-sea liners offering direct services from Ireland to North America and other non-EU locations.

²⁴ "Maritime Transport Services", A Background Note by the WTO Secretariat, November 1998.

²⁵ Detailed data on the split by sea, air and land frontier has not been available since 1992 because of a change in reporting requirements brought about by the creation of the Single European Market.

Domestic and intra-EU short sea ferry services, known as "cabotage" services, are competitive, as there are few, if any, restrictions on non-Irish operators. Shipping services for bulk commodities (oil, minerals, coal, agricultural produce etc.) are also competitive at international level. In contrast, the market for deep-sea liner services with containerised cargos (which account for most Irish trade by value) is characterised by the existence of shipping "conferences", which are more or less integrated cartels fixing prices and frequencies. These can be open to all operators (as with the USA) or closed to a specified group of services providers (as with most of the rest of the world).

While the share of liner traffic held by the conferences has been somewhat eroded by competition from new "outsiders" from South East Asia, they still have a significant influence on the market structure of international shipping services. The Trans-Atlantic Conference Agreement, for example, controlled almost 86 per cent of North Atlantic trade in 2000. These restrictions have been facilitated by the industry's immunity from competition laws in many WTO members (including the EU and the USA). Added to these "private" restrictions on trade in maritime services are a number of government-imposed restrictions in certain countries, such as national cargo preferences, the requirement to appoint a local agent, restrictions to port access, restrictions on equity participation in shipping companies by foreigners and limited access to domestic "cabotage" markets.

Air transport services are the main conduit for trade in high value goods, "just-in-time (JIT)" items and perishables, and are the principal means of access for the ever-expanding number of tourists. While air cargo and passenger transport services within the EU are reasonably competitive as a result of EU transport liberalisation initiatives, such services between EU countries (including Ireland) and the rest of the world is governed by a web of bilateral agreements (based on the reciprocity principle) under the framework of the Chicago Convention (1944). Under these agreements, reciprocal traffic rights are granted among countries to the exclusive benefit of their own national airlines. The agreements typically specify the carriers that may operate between cities in each country and the capacity that can be operated on these routes.

For Ireland, the most significant of these agreements is that with the USA (1995). Given our ever-deepening economic links with the USA through two-way flows of direct investment, technology, trade and tourism, it is clear that U.S.-Irish aviation links are vital for Irish enterprise and regional policy. The bilateral agreement includes the Shannon stop-over requirement and limits to five the number of U.S. cities to which Irish airlines can fly. As these bilateral deals are open only to airlines owned by nationals of the two countries involved, it is often argued that this framework has impeded consolidation in an industry characterised by an excess of small airlines and a need for economies of scale, and has provided a degree of protection to inefficient high-cost carriers. However, it is also true that existing system has been characterised by some liberalisation in the last five years, particularly as a result of "open skies" agreements between United States and various countries (not including Ireland).

One of the well-established goals of Irish enterprise policy has been to foster a competitive market in international and domestic transport services that are cost effective, reliable, frequent and integrated, while preserving the environment and public safety. Policy milestones in this regard have been deregulation of the Ireland-UK aviation market in 1986, internal EU aviation liberalisation in 1993 and the establishment of the National Institute for Transport and Logistics (NITL) in 1998.

This goal must, in part, continue to be achieved through the development of a more vibrant indigenous Irish aviation, shipping and shipping services industry. Working with the IDA, the Irish

Maritime Development Office was established in 2000 to achieve promote the shipping and shipping services industry in Ireland, and will be assisted in this task by the new "tonnage tax" introduced in the 2001 budget, which replaces corporation tax for Irish-registered shipping companies. But it is clearly also in Ireland's strategic economic interest that action be taken at international level to increase competition in the market for international maritime and aviation services, thereby improving quality and lowering cost. In this regard, the new round of WTO services negotiations present an important opportunity.

3.6.2 WTO and Transport Services

Compared with most other service industries, the application of WTO GATS trade disciplines is relatively weak in the transport sector, reflecting specific national sensitivities related to transport issues. The GATS divides transport services into a number of categories, including maritime, air transport, land transport and services auxiliary to all modes of transport, such as warehousing and freight forwarding. Of greatest interest to Irish negotiators are maritime transport and air transport services.

Maritime Transport Services

In the Uruguay Round GATS negotiations, the maritime services sector was divided into three pillars: international deep-sea traffic; auxiliary services (e.g. cargo handling and warehousing); and port services (e.g. berthing, pilot services). Although 32 countries (including the EU) made commitments in these sectors (and five additional countries did so later), some major participants (particularly the USA) did not do so. U.S. reluctance to make commitments in this area stemmed from pressure from trade unions and operators not to abandon national preferences in the shipping sector.

As a result, negotiations on maritime transport continued for almost two years following the completion of the Uruguay Round, but made little progress, and in June 1996 the negotiations were suspended. Despite the failure of the negotiations, some countries decided to unilaterally implement the liberalisation offers that they had made. WTO members also agreed not to put in place any new restrictions on trade in maritime services, and to resume negotiations in the year 2000 on the basis of the offers already tabled. These commenced as scheduled, although there has been little output from the negotiations to date, as the maritime services negotiations, as with negotiations in other service sectors, have since been "bundled" into the wider trade liberalisation round launched in Doha in November 2001.

This new round of negotiations presents a significant opportunity for Ireland and other consumers of international maritime services to improve the level of competition in the market, and thereby lower the cost of shipping goods to non-EU markets. Efforts should focus on tackling both public and private restrictions to trade in international maritime services. Desirable outputs from the round, from an Irish perspective, would include broader and deeper national treatment and market access commitments by WTO members in maritime services (on the basis of the "model schedule" of commitments developed during the last round of negotiations), the removal of remaining restrictions on MFN (most favoured nation) treatment in maritime services, and the introduction of pro-competitive rules in maritime services designed to remove the liner industry's immunity from anti-trust laws in WTO members. According to recent research by the World Bank, these initiatives could lead to an average reduction in liner transport prices by one-third and to cost-savings of up to \$3 billion on global goods exports carried to the United States alone²⁶.

²⁶ "Trade in International Maritime Services: How Much Does Policy Matter?", Fink, Mattoo and Neagu, 2000.

Air Transport

The GATS currently covers only three areas of international air transport. These are:

- ▶ Aircraft repair and maintenance;
- ▶ Computer reservation system services; and
- ▶ Selling and marketing of air transport services.

While the EU (including Ireland) made significant liberalisation commitments in these "soft" air transport sectors, offers by most other WTO members were, however, limited, and real negotiations in the Uruguay Round never began. There is now an opportunity to extend the scope of the "soft" air transport services (services not directly related to air traffic rights – see below) covered by the GATS, as well as to secure broader and deeper liberalisation commitments by WTO members in these sectors. New sectors related to air transport that might be included in the GATS as part of the new round of negotiations include ground-handling services, aircraft leasing, airport management services and general aviation services. Of particular interest to Ireland would be extensive liberalisation commitments by WTO members in the area of airport management services (GATS mode 3) and aircraft leasing (GATS modes 1 and 4). In addition, more commitments by WTO members should also be sought in the area of cross-border selling and marketing of air transport services (GATS mode 1), reflecting the transition to on-line sales by Irish airlines. Since the provision of such services in Ireland is already open to other WTO members as a result of EU initiatives, WTO commitments by the EU in these sectors would not present a new constraint on policy discretion here.

With regard to "hard" services related to air traffic rights between countries, during the Uruguay Round WTO members preferred to stick to the bilateral structure of the Chicago Convention. Air traffic rights, and services "directly related to the exercise of air traffic rights", were explicitly excluded from the final agreement. It was agreed, however, that the exclusion of air traffic rights from the multilateral disciplines of the GATS would be reviewed as part of the current round of the negotiations.

These negotiations have, to date, not produced a consensus that "hard" air transport services, particularly traffic rights for passenger services, should move into the GATS framework. The USA and most of the developing world are against such a move, arguing that the existing system of bilateral agreements has served aviation well, and has facilitated a limited degree of liberalisation in recent years. Neither is there any common EU position on this issue, with many member states (including Ireland) determined to preserve the rights of individual countries to retain control over air traffic rights with non-EEA countries (moving "hard" air transport services into the GATS framework might shift negotiating responsibility to the European Commission, although any agreement would still have to be approved by the member states). In Ireland's case, this is complicated further by the Shannon stop-over requirement for trans-Atlantic passenger services, which, at Ireland's insistence, is part of our bilateral aviation agreement with the USA. This restriction may not be compatible with a broad EU liberalisation commitment in air transport services under the GATS.

Ireland's position on this issue has, however, been somewhat overtaken by external events. In November 2002, the European Court of Justice ruled that eight EU member states were in breach of Community law by virtue of bilateral "open skies" agreements signed with the USA in recent years. The European Commission, which took the case, has requested that these countries rescind the agreements. Although Ireland is not one of the eight member states found in violation of Community law, the Commission has requested from all EU members a mandate to begin

discussions on an EU-U.S. bilateral aviation agreement, to which the USA has expressed interest. Such an agreement would supersede any existing bilateral agreements between individual member states, including Ireland, and the USA.

Notwithstanding these developments, and in view of the reasonable degree of competition already pertaining in the U.S.-Irish aviation market, and for the purposes of maximising the discretion available to Irish policy makers in the fields of regional, enterprise and transport policy, it does not appear to be in Ireland's interest at the present time to support the extension of GATS coverage to "hard rights" in passenger air transport services. The negotiations might, however, explore the possibility of extending the coverage of GATS to other parts of the air transport industry, and particularly air cargo transport. While air cargo regulation in Ireland is already quite liberal in some respects, further liberalisation through extending GATS disciplines to this sector might be useful in promoting competition and lowering the cost of international air transport services for Irish traders. This could be achieved while at the same time maintaining the existing regulatory structure for non-EU passenger services.

3.6.3 Negotiating Objectives for the Transport Services Sector

Within this framework, Ireland's negotiating priorities in the new round of WTO negotiations are as follows:

- ▶ As part of the new round of WTO GATS negotiations, Ireland will seek:
 - ▶ broader and deeper national treatment and market access commitments by WTO members in maritime services (on the basis of the "model schedule" of commitments developed during the last round of negotiations);
 - ▶ the removal of all restrictions on MFN treatment in maritime services; and
 - ▶ the introduction of pro-competitive rules in maritime services designed to remove the liner industry's immunity from anti-trust laws in WTO members.
- ▶ As part of the review of GATS commitments in "soft" air transport sectors, Ireland should seek to extend GATS disciplines to new sectors such as ground-handling services, aircraft leasing airport management services and general aviation services. EU negotiators should concentrate on achieving extensive liberalisation commitments by WTO members in the areas of airport management services (mode 3), aircraft leasing (modes 1 and 4), and cross-border selling and marketing of air transport services (mode 1).
- ▶ Ireland will resist, for the present time, the extension of GATS coverage to passenger air transport services. Ireland is, however, open to the possibility of extending the coverage of GATS to other parts of the air transport industry, and particularly air cargo transport.

4 Electronic Commerce

4.1 Background

A central aim of Irish enterprise policy in recent years has been to position Ireland as a global platform for the electronic delivery of digital content and other services. The "Enterprise 2010" report by Forfás envisaged an enterprise sector in Ireland which is among the world leaders in the adoption and use of e-business. The "Report on e-Commerce: The Policy Requirements" by Forfás highlighted how e-business offers a new route to overcoming some of Ireland's strategic challenges, including our peripheral location on the edge of Europe, the high proportion of small- and medium-sized enterprises (SMEs) within indigenous industry, and regional imbalances in the distribution of economic activity nationally.

The services sector of the economy is being affected to the greatest extent by e-business. Communications services are facing the emergence of Internet telephony, email, video conferencing etc. that will complement or replace traditional mail and telecommunication services. Wholesale and retail trade is being affected by the Internet both as a new medium of exchange and the use of the Internet to re-organise logistics. Many financial and business services, including accounting, computing and advertising, also lend themselves to electronic delivery. University education, tax collection and other public services are also moving online.

Trade in some goods will also move online, albeit to a lesser extent than services. Packaged software and media products, including newspapers, books and magazines, recorded film and music, software and video games, which have traditionally been delivered as goods in a physical carrier medium, are increasingly being distributed in digital form over the Internet. Global demand for such products is likely to intensify in the next decade, reflecting the roll-out of broadband networks and the proliferation of new communications devices. Trade over networks reduces transportation, retailing and administration costs. Rising global access to PCs and other Internet delivery systems, together with the expansion of telecoms bandwidth, offers huge potential for Irish exporters of services, software, digital content and other media products.

Ireland's emergence as a hub for e-business will, however, partly depend on clarification of how existing EU and global trade rules affect products delivered through electronic networks, and whether this process results in the creation of a "seamless" global electronic marketplace. Efforts have been underway at a number of international fora to identify and remove legal, institutional and technical barriers to trans-national electronic business. For example, the UN Conference on International Trade Law (UNCITRAL) has developed a "model law" to provide a framework for electronic equivalents to paper-based commercial law. The principles espoused in the UNCITRAL model law were clearly reflected in Irish e-commerce legislation enacted in 2000. International organisations such as the EU, OECD, World Customs Association, and the Bank of International Settlements, among others have begun to provide key elements to the creation for a harmonised global approach.

4.2 WTO and Electronic Commerce

The creation of a "seamless" global electronic marketplace will also depend heavily on rule-making at the WTO, as the body responsible for the rules of international trade. Since 1998, WTO members have been exploring how e-commerce should be dealt with in the context of the Uruguay Round Agreements.

There is much common agreement among WTO members on the treatment of e-commerce. For goods ordered electronically but delivered physically, WTO members agree that normal trade rules under the GATT apply. For traditional services that are delivered electronically (legal, accounting etc.), WTO members agree that rules governing the provision of the service itself is still subject to normal trading rules under the GATS. This means that whenever a WTO member has committed itself to removing import barriers in certain service sectors of the market, such as legal, computer or accounting services, the commitments apply also when the service is delivered electronically.

A number of issues have arisen, however, where no consensus exists as yet. These include:

The Classification of Digital Content. In the case of electronic transactions involving the transmission of information previously distributed on a physical medium (e.g. CD ROM, diskette, books, magazines, videotape), there has been some disagreement within the WTO about whether this electronic delivery constitutes a good, a service, or something different. No agreement on this has been reached and it is likely that the determination of the issue will be folded into the new round of negotiations. The classification issue is potentially significant because there are different WTO rules governing trade in goods and trade in services. Given the low level of market access commitments that have been made by WTO members for trade in services, as compared with trade in goods, it is theoretically possible that for some products, market access might be more restricted when products are delivered electronically rather than physically. While no specific difficulties have yet occurred, software and other digital content may, in theory, face greater barriers to entry when electronically delivered as compared to the current experience of exports in a physical format (diskettes, CD ROMs).

The lack of extensive services commitments by many WTO members under the GATS means that most WTO members are entitled to put in place, without prior consultation, measures that have the direct or indirect effect of restricting or excluding electronically-delivered digital products from foreign markets. While there are, at present, technical difficulties in blocking the cross-border electronic delivery of digital content across networks, this may not always be the case. In some countries, there are ongoing efforts to develop sophisticated technologies that will allow "filtering" of cross-border Internet traffic. More importantly, most businesses do not like to operate in environments lacking legal and regulatory clarity. The possibility of future policy changes in foreign countries may, in itself, act as a barrier to investment and market development by Irish e-commerce companies.

The current position of the EU (and Ireland) is that all electronic deliveries, including digitised products, are services and are therefore subject to the GATS. This also appears to be the view of most WTO members. Accordingly, Ireland will seek to ensure that the quality of current liberalisation commitments in all service sectors be improved, so that the on-line delivery of digital content should not face any additional market access barriers than delivery through of the same content on physical carrier media.

Classification of E-Services within the GATS. The likely treatment of all electronically delivered products as services, whether they have a physical counterpart or not, raises the question of whether the GATS as presently constituted provides adequate treatment of "e-services". Even within the GATS, there is considerable ambiguity as to the classification of e-services and therefore a corresponding ambiguity as to the market access commitments made by WTO members with regard to e-services. As discussed in Section 3.1, commitments under GATS are made sector-by-sector with respect to four "modes" of supply based on the location of the supplier and the consumer: cross-border supply (mode 1), consumption abroad (mode 2), foreign

presence (mode 3) and movement of persons (mode 4). While the WTO members have now agreed that the GATS covers e-services, there is less consensus on which mode of delivery e-services falls into (mode 1 or mode 2). Ambiguity regarding the mode by which a specific service is delivered can lead to uncertainty in understanding a member's GATS commitments for that service. The determination as to which mode e-services fit into will have important implications regarding market access restrictions.

A preliminary analysis of WTO member commitments under the GATS suggests that, from an enterprise development perspective, it is in Ireland's interest to support the GATS mode 2 as the preferred classification for electronic deliverables. This reflects the fact that, in many service categories, most countries have agreed to place no restrictions on consumption of services overseas (Mode 2), while many countries have reserved the right to place restrictions on cross-border delivery of services (Mode 1). It should be noted, however, that there is no consensus on interpreting the modes of supply in this fashion. Moreover, as more and more services are delivered electronically, countries may find that their market access commitments under the GATS will have expanded significantly beyond what they originally envisaged. While Ireland may find this a welcome development for enterprise policy reasons, this treatment of e-services classification may cause resentment in some developing countries, particularly in the absence of corresponding concessions from countries which benefit disproportionately from such classification.

Duties on E-Commerce Transactions: With a view to encouraging the development of transnational e-business, in September 1998 WTO Ministers made a political commitment to refrain from introducing customs duties on electronic transmissions, pending further work on the classification issues mentioned above. The moratorium was extended by the Ministerial meeting in Doha in November 2001 until 2003.

This decision to implement a moratorium was not controversial, since no country has yet developed a system for collecting customs duties on electronic transmissions. Also, customs duties usually apply only to goods, and no WTO member currently levies duties on service imports. The likely classification of all electronic transmissions as services may prove significant in this regard. Yet, it should be stated that there is no explicit consensus between WTO members on the fact that one cannot impose customs duties on services. There are also a number of initiatives worldwide to more closely monitor and regulate cross-border electronic deliveries of goods and services, for statistical and taxation purposes. It is therefore important to remove legal uncertainty with regard to the potential application of customs duties to e-commerce transactions at the earliest possible stage in order to create an open and predictable trading environment for companies.

As the EU does not, at present, collect duties on electronic deliverables, revenues foregone from an extension to the moratorium on duties on electronic transmissions would be zero. A recent study concluded that even if all "digitisable" media products now traded via physical carrier media were instead delivered electronically, the loss in customs revenues to the EU would amount to less than one percent of total tariff revenues²⁷. Furthermore, duties collected on such electronic transmissions would likely not be sufficient to cover the costs of any system required to track and recover duties. It is in the interest of Ireland and the EU, therefore, to support an indefinite moratorium on the use of custom duties on electronic transmissions and e-services, while giving the WTO more time to build a consensus around the classification issues.

²⁷ "A Quantitative Assessment of Electronic Commerce", A WTO Working Paper, Schuknecht L., 1999.

4.3 Negotiating Objectives for Electronic Commerce

Within this framework, Ireland's negotiating objectives in the area of electronic commerce are as follows:

- ▶ In the event that the electronic transmission of digitised content is classified as services under WTO rules (and therefore subject to the GATS rather than GATT), Ireland will seek, in conjunction with our EU partners, to ensure that the quality of current liberalisation commitments in all service sectors be improved, so that the on-line delivery of digital content should not face any additional market access barriers than delivery through of the same content on physical carrier media.
- ▶ Ireland will support an indefinite moratorium on the use of custom duties on electronic transmissions and e-services.

5 Trade Facilitation

5.1 Background

Trade facilitation is often defined as "the simplification and harmonisation of international trade procedures", and has been a goal of companies and governments for over a century. However, trading companies around the world, and particularly small- and medium-sized enterprises, still face significant administrative and procedural barriers and costs in moving goods across borders. Data requirements and customs procedures adding to the costs of Irish exports to non-EU markets include²⁸:

- ▶ Unnecessary or excessive data or documentation requirements that create additional costs and delays for Irish traders (e.g. irrelevant data requests, non-acceptance of commercially available information, multiple authorisations and fees, consular forms etc.);
- ▶ The need to re-generate and re-submit different information and documentation at different stages in the transaction process;
- ▶ Repeated and multiple demands for the same information and documentation from different agencies;
- ▶ A lack of harmonisation with regard to the documentation/data required by different countries;
- ▶ A lack of transparency concerning customs procedures and other import requirements in general, and a lack of rapid redress in the event of erroneous decisions;
- ▶ A lack of co-ordination between different control agencies at import and export, and hence multiple submissions of documentation and multiple inspections;
- ▶ Corruption and integrity issues, rooted in a lack of training and resources; and
- ▶ Non-automation of customs procedures, notwithstanding an exponential increase in trade.

Among the hundreds of procedural obstacles to exports that have been identified by Irish companies are complicated and burdensome U.S. rules of origin, the requirement to translate English language invoices into Polish for Polish customs authorities, and excessive penalties in Brazil for documentation errors²⁹. The growth in such procedural and administrative obstacles to trade over the last decade stem from a number of factors:

- ▶ The exponential growth in world trade over the last decade has not always been matched by reform and modernisation of customs procedures.
- ▶ The global expansion of regulatory requirements relating to health, safety, transport of dangerous goods, prohibitions, preferential tariffs and rules of origin have increased significantly official data and information requirements.
- ▶ There has been a lack of political will among governments to place simplification of trade procedures high on their domestic or international trade agendas.

The United Nations Conference on Trade and Development (UNCTAD) estimates that, partly as a result of inefficient procedures, the average customs transaction involves 20-30 different parties, 40 documents, 200 data elements (30 of which are repeated at least 30 times) and the re-keying of 60 per cent-70 per cent of all data at least once. According to EU estimates, compliance with procedural requirements accounts for anywhere between 2 per cent and 10 per cent of total transaction costs of internationally traded goods. Surprisingly, awareness of these costs among

²⁸ *As a result of the Single European Market programme, trade facilitation issues for Irish companies relate primarily to non-EU markets.*

²⁹ *"A Review of Trade Facilitation for Ireland", KPMG on behalf of Forfás and the Institute of International Trade of Ireland.*

trading companies in Ireland and elsewhere appears to be relatively low. This may reflect the fact that these costs are often aggregated with shipping/transport costs, and or not borne directly by the exporting companies, thus reducing visibility.

There will, of course, always be transaction costs associated with international trade, and that these costs will generally be higher than for domestic trade. However, the problems and inefficiencies listed earlier are increasingly problematic for Irish companies for a number of reasons. Firstly, as trade volumes rise and modern manufacturing and supply chain techniques place a greater emphasis on speed of delivery, the cost of delays in the passage of goods through borders as a result of customs inefficiencies increases. Secondly, as tariffs fall, the cost of tariffs to trading companies is often less than the cost of fulfilling international trade procedures. Finally, the cost of excessive trade procedures tends to fall disproportionately on small and medium-sized enterprises, for which the costs of trade procedures cannot be spread over a large volume of trade.

Indeed, the reason why relatively few Irish-owned companies, and particularly SMEs (which account for over half of Irish GDP), are active players in non-EU markets is likely to have more to do with customs-related red tape than tariff barriers. The trade-related administrative burdens for enterprises that do not regularly ship large quantities of goods are often too high to make foreign exporting worthwhile. Reducing these administrative burdens and procedural obstacles has been identified by many companies in Ireland as the most important single potential outcome of the new WTO round of negotiations³⁰.

Inefficient trade procedures, both on the import and export side, are the equivalent of a tax on trade. From an Irish enterprise policy perspective, growth in the numbers of indigenous Irish companies doing business in non-EU markets would be greatly enhanced by the simplification of international trade procedures and elimination of unnecessary administrative, data and procedural obstacles. Moreover, it is apparent from an analysis of our trade patterns that this issue is potentially more significant to Ireland than to any other WTO member. In 2001, Irish goods trade (imports and exports) with non-EU countries was equivalent to over 40 per cent of Irish GDP, making Ireland more dependent on the free-flow of goods with foreign (non-EU) countries than almost any other WTO member. On the basis of these figures, trade facilitation measures could save companies in Ireland over €1 billion. Addressing this issue must therefore be a priority for Irish negotiators.

5.2 WTO and Trade Facilitation

Over the last 40 years, a number of international bodies and private operators have taken initiatives to solve trade facilitation problems in areas such as:

- ▶ Documentation (UN Economic Commission for Europe (UNECE))
- ▶ IT harmonisation (G7, UN Conference on Trade and Development, UNECE)
- ▶ Technical assistance (UNCTAD, EU, World Customs Organisation (WCO))
- ▶ Modernisation of customs rules and procedures (WCO)
- ▶ Electronic payments (banks)
- ▶ International Trade Law (UN Commission on International Trade Law)

However, these efforts have been fragmented and uncoordinated and, in contrast to commitments made under the GATT and subsequently the WTO, commitments made by countries under these initiatives were not enforceable. Many countries argued that the benefits of tariff

³⁰ Forfás World Trade Organisation Industry Consultation Process.

reduction under the WTO were being frustrated by new non-tariff barriers related to customs procedures and other issues. Although various GATT articles and provisions (Articles V, VIII and X) have long sought to promote the facilitation of trade, the possibility of introducing mandatory trade facilitation rules was first added to the WTO agenda in 1996. In that year, WTO Ministers directed the Council for Trade in Goods "to undertake exploratory and analytical work, drawing on the work of other relevant organisations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area".

After more than five years of exploring and analysing the scope for WTO rules on this issue, the advantages of using the WTO to agree binding rules on trade facilitation have become clear to most WTO members. These advantages include:

- ▶ the strength and global inclusiveness of the WTO as an organisation;
- ▶ the complementarity of trade facilitation to other multilateral trade issues;
- ▶ the WTO's focus on the needs of the trading companies rather than bureaucracies;
- ▶ the enforceability of WTO rules; and
- ▶ the possibility of achieving sustained direction and political impetus at the WTO.

By 2002 most WTO members agreed that it was time to move to a negotiating phase. At the fourth WTO Ministerial in Doha in November 2001, WTO ministers agreed that "negotiations (on trade facilitation) will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations"³¹.

In the interim, the Ministerial Declaration directed the WTO's Council for Trade in Goods to review and as appropriate, clarify and improve relevant aspects of existing WTO provisions and to identify the trade facilitation needs and priorities of members, in particular developing and least-developed countries.

The EU has interpreted the Doha Ministerial Declaration as a clear mandate to commence negotiations on WTO trade facilitation rules after the fifth Ministerial Conference in Mexico in September 2003. However, some developing countries, led by India, maintain that the Declaration preserves the right of members to veto the launch of negotiations in this area. Many developing countries remain concerned that additional WTO rules in the area of trade facilitation, as in other "new" WTO areas such as investment (see Section 6), environment and competition, would exceed their implementation capacities and expose them to costly dispute settlement procedures. International bodies and developing countries have also argued that progress in this area will require significant levels of technical assistance and resources for developing countries to bring trade-related infrastructure, skills and procedures in these countries into line with developed country standards.

5.3 Negotiating Objectives for Trade Facilitation

Within this context, Ireland's WTO negotiating objectives in the area of trade facilitation include the following:

- ▶ Ireland will support the negotiation of binding multilateral rules on trade facilitation as part of the new round of WTO trade liberalisation negotiations. A "dual track" approach is required that harmonises existing standards and develops the next generation of rules and standards that focus on the new economy, characterised by e-business and globally-distributed supply chains.
- ▶ The WTO's principles of national treatment, MFN and transparency should be applied to the area of trade facilitation. Existing WTO rules and provisions, such as GATT Articles V (freedom of transit), VIII

³¹ Paragraph 27 of the Doha Ministerial Declaration.

(fees and formalities connected with importation and exportation) and X (publication and administration of trade regulations) should be enhanced and made fully operational. In this regard, we take note of a proposal by the European Commission to create a WTO provision on the avoidance on unnecessary procedural obstacles to trade³². This might include a requirement for WTO members to reduce import and export procedures to the absolute minimum necessary to ensure the application of legitimate controls, and to use the least trade restrictive procedures available.

- ▶ WTO trade facilitation rules should also integrate and make enforceable the standards and instruments developed by other bodies. These should include:
 - ▶ UN/UNECE standards and guidelines for export and import documentation (the Single Administrative Document etc.); and
 - ▶ The WCO's Kyoto Convention on Simplification and Harmonisation of Customs Procedures (Revised).
- ▶ In this regard, Ireland will support EU ratification, as a matter of urgency, of the WCO's revised Kyoto Convention.
- ▶ Specific trade facilitation problems identified by Irish companies during recent consultations should be addressed within this context³³.
- ▶ Concerns among developing country with regard to their capacity to implement WTO rules on trade facilitation should be addressed through lengthy phase-in periods and increased technical assistance and aid to developing countries, under multilateral and bilateral programmes, aimed at improving trade-related procedures, skills and infrastructure in developing countries.

³² "Trade Facilitation: Assessment of the Scope for WTO Rules in the Field of Import, Export and Customs Procedures", Communication by the European Commission to the WTO, September 1998.

³³ See footnote 29 (KPMG Report).

6 Trade and Direct Investment

6.1 Background

Foreign Direct Investment (FDI), whether through the acquisition of existing companies in foreign countries or the establishment of new "greenfield" operations abroad, is often the most efficient delivery mechanism for overseas sales of goods and services. The fast growth in FDI flows into Ireland during the 1990s has been well documented. The flow of direct investment has not, however, been all in one direction. In 2001, Irish companies invested €6.5 billion overseas, reflecting the emergence of a growing cohort of Irish multinational companies.

Indeed, global FDI flows in recent years have been growing significantly faster than international trade. This reflects a number of factors: the liberalisation of trade, investment and capital markets (including the relaxation of controls on mergers and acquisitions); the deregulation and privatisation of service industries; and increased competitive pressures stemming from globalisation and technological change. International production – production by the foreign affiliates of multinational companies - is now a more important means of selling into foreign markets than "traditional" exporting from a home base.

Most studies suggest that outward direct investment is broadly beneficial for the "home" economies concerned, boosting domestic exports, employment and wages, and catalysing a restructuring of the domestic economy into higher value added activities³⁴. They also indicate that countries with high levels of outward direct investment spend more on research and development, and have higher skilled workers. Far from being symptomatic of economic decline, growing levels of outward direct investment by Irish companies, therefore, reflect a restructuring of Irish-owned industry into higher-value added activities that will form the basis of long-term growth in competitiveness, exports and employment. In this sense, outward direct investment is a crucial element in furthering the aims of Irish enterprise policy with regard to raising the average skill content and value-added of Irish-based enterprise activities. As long as the Irish business environment remains supportive of high-value added activities, then outward direct investment by Irish companies should be consistent with rising average wages and living standards in this country.

Openness of markets to FDI differs greatly among different countries. Ireland does not, in general, discriminate between indigenous and foreign-owned companies. While most non-EU countries have also unilaterally liberalised their investment environment in recent decades, many still impose a wide range of barriers to the operations of foreign-owned companies in their markets. These take a number of forms, such as:

- ▶ restrictions on the right to private ownership and establishment;
- ▶ restrictions on the legal form foreign investment must take e.g. compulsory partnerships with local enterprises;
- ▶ laws or constitutional provisions specifying sectors from which foreign investors are excluded;
- ▶ a lack of transparency or fairness in decision making by public officials;
- ▶ restrictions on the numbers of foreign firms that can operate in particular sectors;
- ▶ limitations on land ownership;

³⁴ "Statement on Outward Direct Investment", Forfás, October 2001.

- ▶ higher tax rates for foreign-owned companies;
- ▶ compulsory technology sharing with local companies;
- ▶ restrictions on repatriated profits and on other capital movements; and
- ▶ performance requirements e.g. where investment approval is tied to export or employment targets.

Some countries address such overseas investment barriers through Bilateral Investment Treaties (BITs). These are legal agreements between two countries aimed at providing legal protection for foreign investments from discriminatory treatment and/or expropriation as well as providing a mechanism for dispute resolution. To date, Ireland has signed only one BIT, with the Czech Republic. It is Ireland's view that BITs are of limited use in facilitating flows of direct investment and trade between Ireland and other countries. Accordingly, it is government policy not to negotiate any further BITs at this time. This could, however, be reviewed where there are clear, identifiable benefits for Irish companies in specific cases.

Instead, Ireland, in association with our EU partners, should attempt to secure agreements on direct investment rules at a multilateral level. This approach will require less resources on Ireland's part compared with the negotiation of multiple BITs, and should secure better results. Since the collapse of negotiations at the OECD on the "Multilateral Agreement on Investment" in 1999, efforts to create new international rules on cross-border flows of direct investment have been taking place under the auspices of the WTO. These negotiations represent an important opportunity to improve the investment environment for Irish businesses in overseas markets.

6.2 WTO and Direct Investment

The close relationship between trade and investment issues has long been recognised by international trade negotiators. One of the intentions of the negotiators of the original GATT in the 1940s was for rules on investment (and competition) to exist alongside those for trade in goods. These agreements could not be completed, however, because of the failure at that time to create an International Trade Organisation. Some progress was later made in the 1970s with the Agreement on Trade Related Aspects of Investment (TRIMs), which required the notification and eventual elimination of investment measures by WTO members that directly distorted trade (local content requirements, trade balancing requirements etc.) and with the 1994 General Agreement on Trade in Services (GATS), under which members could commit to allowing the commercial presence of foreign service providers in specific sectors. These efforts were, however, limited in scope and sectoral coverage (not including primary and secondary industries such as manufacturing) and have not prevented the proliferation of investment-distorting measures among WTO members. Moreover, efforts to negotiate a more broad-ranging Multilateral Agreement on Investment (MAI) under the auspices of the OECD failed in 1998.

The possibility of introducing mandatory rules on direct investment was first added to the WTO agenda in 1996. In that year, WTO Ministers established a Working Group to examine the relationship between trade and investment. After more than five years of exploring and analysing the scope for WTO rules on this issue, the advantages of using the WTO to agree binding rules on direct investment have become clear. These advantages are:

- ▶ the strength and global inclusiveness of the WTO as an organisation (as opposed to the OECD and other "developed world" institutions);
- ▶ the complementarity of direct investment to other multilateral trade issues;
- ▶ the enforceability of WTO rules; and
- ▶ the possibility of achieving sustained direction and political impetus at the WTO through "package deals" that can ensure win-win outcomes for all WTO members.

By 2002 most WTO members had agreed that it was time to move to a negotiating phase. At the fourth WTO Ministerial in Doha in November 2001, WTO ministers agreed that "negotiations (on direct investment) will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations".

The EU has interpreted the Doha Ministerial Declaration as a clear mandate to commence negotiations on WTO direct investment rules after the fifth Ministerial Conference in Mexico in September 2003. However, some developing countries, led by India, maintain that the Declaration preserves the right of members to veto the launch of negotiations in this area. Many developing countries remain concerned that additional WTO rules in the area of direct investment, as in other "new" WTO areas such as trade facilitation, environment and competition, would exceed their implementation capacities, expose them to costly dispute settlement procedures and diminish their negotiating power over multinational companies.

It should be highlighted that it is not the objective of the negotiations to impose new disciplines on the instruments used by WTO members to attract foreign direct investment, but rather to limit the extent to which some WTO members discriminate against foreign companies. For Ireland, which is already subject to EU State Aid rules with regard to foreign investment incentives, there will be no new constraints on policy discretion in this area. Moreover, since Ireland does not discriminate against foreign-owned enterprises in any manufacturing sector, new WTO rules in this area would not require any adjustment to Irish regulations and legislation. Existing restrictions on foreign involvement in agricultural activity in Ireland could also be accommodated in any multilateral agreement³⁵.

6.3 Negotiating Objectives in Trade and Direct Investment

From an enterprise policy perspective, Ireland's objective at the WTO negotiations are to negotiate an agreement that creates a stable, predictable and transparent business environment for Irish investors in all WTO member countries. Within this context, Ireland's broad goals at the negotiations are:

- ▶ to make the WTO the forum for negotiations on, and application of, rules on direct investment. The WTO is the most appropriate international forum to take into account the interests of both developing and developed countries, and the special needs of developing and least-developed countries should be taken into account as an integral part of any framework;
- ▶ to encourage as many WTO members as possible to sign a WTO agreement on investment rules that should be based on sector-by-sector "GATS-type" positive commitments by each member, including the application of the WTO's market access and non-discrimination (national treatment and most-favoured nation – see Glossary of Terms) principles to direct investment flows. The positive "GATS-type" approach would allow WTO members to make liberalisation commitments only in those sectors that they felt appropriate, in the context of their level of development and development policy. Sectors that will be of particular interest to Irish industry will include construction materials, paper and packaging, computer services and software, agri-business and retailing;
- ▶ to agree international rules on investment protection in order to create an investment climate that benefits both international investors and host countries. A framework of multilateral rules for FDI should also ensure the right conditions for international investment to be conducive to sustainable

³⁵ Ireland has listed one horizontal restriction to national treatment in the EU's GATS schedule of commitments related to the acquisition of land here by foreign companies. The restriction relates to the Land Act of 1965, which requires permission from the Land Commission for companies to buy agricultural land. Under Section 45 of the Act, the Minister for Enterprise, Trade and Employment is empowered to issue certificates to the effect that she is satisfied that parcels of land are being acquired for the purpose of industry other than agriculture. These certificates are only required in the case of nationals from countries outside the EU and the European Economic Area (EEA). As this could be interpreted as a restriction to the national treatment of foreign (non-EEA) service providers in Ireland, it had to be listed in the EU's schedule of commitments. Similarly, it could also be interpreted as a restriction to the national treatment of all non-EEA investors, but could be similarly listed as a limited restriction to the general principal of national treatment of foreign investors.

development, while preserving the ability of host countries to regulate economic activity in accordance with WTO principles; and

▶ to ensure that rules on direct investment should be sufficiently flexible to allow the continuation of Ireland's restrictions on foreign (non-EEA) involvement in agricultural activity here.

7

Protection of Intellectual Property

7.1 Background

Intellectual property rights are the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her creation for a certain period of time. Intellectual property rights can be divided into two main areas:

(i) Copyright and rights related to copyright. The rights of authors of literary and artistic works (such as books, musical compositions, paintings, computer software and films) are protected by copyright, usually for a minimum period of 50 years after the death of the author. Also protected through copyright and related (sometimes referred to as "neighbouring") rights are the rights of performers (e.g. actors, singers and musicians), producers of phonograms (sound recordings) and broadcasting organisations. The purpose of protection of copyright and related rights is to encourage and reward creative work.

(ii) Industrial property. This includes trade marks, industrial designs and patents. A trade mark is the means by which a business identifies its goods or services and distinguishes them from the products or services supplied by other businesses. An industrial design is the appearance of the whole or a part of a product resulting from the features of, in particular, the lines, contours, colour, shape, texture or materials of the product itself or its ornamentations. A patent confers upon its holder, for a limited period, the right to exclude others from making commercial use of the patented invention without the consent of the patentee. In return, the inventor must make a full disclosure of the nature of his invention, thereby widening scientific and technological knowledge. The temporary monopoly given by a patent encourages companies to invest in the research and development needed, for example, to make new drugs.

Intellectual property is an increasingly important part of international trade. Most of the value of new medicines and other high technology products lies in the invention, innovation, research, design and testing involved. Films, music recordings, books, computer software and on-line services are bought and sold because of the information and creativity they contain, not usually because of the plastic, metal or paper used to make them. The value of many products that used to be traded as low-technology goods is now increasingly dependent on design and other intellectual property — for example brand-named clothing or new varieties of plants.

Intellectual Property Protection and Irish Enterprise Policy

One of the central aims of enterprise policy over the next decade is to develop Ireland as a knowledge-based economy³⁶. In practical terms, this means positioning intellectual property creation as the core value-added element of range of industries here, such as computer software, digital content, Integrated Circuit (IC) design, biotechnology (life sciences) and clothing production. With this objective in mind, the government has put in place a number of schemes to increase the level of spending by companies on research and development (R&D) and to increase co-operation between the private sector and the university system. Through the establishment of Science Foundation Ireland (SFI), the government has also made a significant commitment in terms of public spending on research.

³⁶ "Enterprise 2010", Forfás, January 2000

Other policy measures to support this goal include increased government and university supports for doctoral and post-doctoral research and reform of domestic legal protection for copyright and other intellectual property. Achieving adequate returns on the growing Irish public and private investment in R&D also requires, however, an effective international system for the protection of intellectual property rights.

7.2 WTO and Protection of Intellectual Property

In the early 1990s, the extent of protection and enforcement of intellectual property rights varied widely around the world. As intellectual property became a significant element of trade, these differences became a source of tension in international economic relations. New internationally-agreed trade rules for intellectual property rights were seen as a way to introduce more order and predictability, and for disputes to be settled more systematically.

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), negotiated as part of 1986-94 Uruguay Round, is an attempt to narrow the gaps in the way these rights are protected around the world, and to bring them under common international rules. The areas of intellectual property that it covers are: copyright and related rights; trademarks including service marks; geographical indications including appellations of origin; industrial designs; patents; the layout-designs of integrated circuits; and undisclosed information including trade secrets and test data. In addition to setting out the minimum standards for intellectual property protection among WTO members, the agreement also lays down principles for the enforcement of intellectual property rights and the resolution of disputes between members.

TRIPS and Biotechnology

One of the exceptions to patent protection under the TRIPs is contained in Article 27.3 (b). This permits WTO members to exclude from patentability "plants and animals and other micro-organisms, and essentially biological processes for the production of plants and animals other than non-biological and microbiological processes". A review of this article was mandated for 1999, and the Ministerial Declaration in Doha in late 2001 instructs the WTO's TRIPs Council to continue this review, and to examine the relationship between TRIPs and the Convention on Biological Diversity and the Protection of Traditional Knowledge and Folklore and other new developments. Ireland has a particular interest in this review process as it concerns issues such as the patentability of biotechnological inventions, the protection of plant varieties and farmers' rights to save, use and sell seeds.

Enforcement of Intellectual Property Rights

While the rules and regulations for the international protection of intellectual property are now deemed adequate by most WTO members, there remain significant problems relating to enforcement of these regulations. Widespread software theft is, for example, probably the single most significant barriers to trade facing the global software industry. The lack of protection for intellectual property in some foreign markets often acts as a significant barrier to business development in those markets by software companies in Ireland. Abuse of copyright and brand names is also significant barrier to trade facing the global clothing industry, including clothing companies in Ireland. Another issue of particular concern to the Irish spirits industry is the usurpation by non-EU producers of geographical Irish indicators ("Irish whiskey", "Irish cream liqueurs" etc.) and trademarks. These must all be tackled through better enforcement of intellectual property rights in parallel with the new round of WTO negotiations.

It is also noted that a proposal for EU Directive on Counterfeiting and Enforcement of Intellectual Property Rights is expected shortly from the European Commission. This proposal is likely to set the standards of enforcement for all EU member states and any progress in this dossier must be reflected as an intrinsic part of any position that Ireland might seek to adopt in relation to WTO talks on this aspect.

7.3 Negotiating Objectives for the Protection of Intellectual Property

Within this framework, Ireland's WTO negotiating objectives in the area of intellectual property are as follows:

- ▶ Subject to the review of the relationship between the TRIPs and pharmaceuticals (see below) and in parallel with the new round of WTO negotiations, Ireland will pursue full implementation and effective enforcement of existing agreements to protect intellectual property, including software copyright, Integrated Circuit designs, geographical indicators, designs and brand in all WTO member countries. A key objective here will be to address the usurpation by non-EU producers of geographical Irish indicators ("Irish whiskey", "Irish cream liqueurs" etc.) and trademarks. This must be tackled as part of a new WTO trade liberalisation agreement.

TRIPs, Access to Medicines and the WTO Ministerial Declaration

Although not part of the new "round" of trade liberalisation negotiations launched at Doha, the TRIPs-related issues that has received the most attention in recent years is the relationship between the TRIPs agreement and the pharmaceuticals industry³⁷. For the pharmaceuticals industries, the major accomplishment of the TRIPs is in the area of patent protection. The TRIPs Agreement provides that subject to certain exceptions, patents shall be available for any inventions in all fields of technology and patent rights are enjoyable "without discrimination as to place of invention, the fields of technology and whether products are imported or locally produced".

At Doha in November 2001, WTO ministers made a separate declaration emphasising that the TRIPs agreement, including the protection of patented drugs, does not and should not prevent member states from taking measures to protect public health. This separate declaration on TRIPs and public health was designed to respond to growing concerns about the possible implications of patent protection for access to medicines in poor countries. The Declaration extended the deadline for least-developed countries (LDCs) to apply provisions on pharmaceutical patents until 2016. It also confirmed the right of WTO members to make use of the flexibility already contained in the TRIPs agreement, including the right to grant compulsory licences and the freedom to resort to parallel imports where appropriate.

The Declaration also tasked the WTO's TRIPs Council with finding a solution to the problems developing and least-developed countries may face in making use of compulsory licensing if they have too little or no pharmaceutical manufacturing capacity. In this regard, Ireland takes note of a proposal for the Irish Pharmaceutical Healthcare Association (IPHA) to utilise existing WTO provisions for waivers from WTO commitments to allow countries to export pharmaceuticals produced under compulsory licence in exceptional circumstances. Working with the European Commission, non-governmental organisations (NGOs) and representatives of the pharmaceuticals industry here, Ireland is playing an active role in finding a balanced solution that maximises the availability of patented drugs in developing countries at affordable prices, while also recognising the importance of intellectual property protection in bringing forth new medicines.

³⁷ This issue was the subject of a separate ministerial statement at the Doha Ministerial Meeting in November 2001. It should not, however, be considered part of the wider agenda of trade liberalisation negotiations launched at Doha at the same meeting.

8

Conclusions

A strong WTO and a liberal, rules based international trading system is strategically important for Ireland. The removal of impediments to international trade between Ireland and the rest of the world has been a key element of Ireland's economic transformation since the 1960s – first with the UK, then with our EU partners and subsequently with the rest of the world. Opening up trade with other countries has stimulated Irish economic growth and higher living standards as a result of the impact on productivity of more efficient specialisation, economies of scale increased competition and the spread of technologies and investment.

The emergence within Ireland during the 1980s and 1990s of industry clusters dominated by foreign multinational companies involved in the manufacture and distribution of electronic, chemical, pharmaceutical and other goods could not have occurred without the development of WTO trade disciplines to open up foreign markets in the relevant sectors. Increasingly, overseas (and particularly U.S.) companies establish in Ireland not just to service the western European market, but also the Middle Eastern, African, U.S. and even Asian markets. Irish consumers have also benefited from trade liberalisation through a wider choice of goods and services and the lower prices that go with competition.

WTO rule making as part of the Doha Development Agenda will shape the international regulatory landscape in which Irish enterprise policy operates over the next decade. Ireland's efforts to position itself as a global hub in certain tradable services, digital content and other "new" industries will, in part, depend on the development of "seamless" global marketplaces in these industries as a result of WTO rule making. Encouraging more Irish SMEs to trade outside the EU market may depend on WTO-led simplification and harmonisation of international trade procedures and data requirements. Removing barriers to outward investment by the growing cohort of Irish multinational companies will be influenced by the WTO's ability to extend the multilateral trading system to incorporate foreign direct investment flows. Achieving adequate returns on growing Irish public and private investment in research and development will be supported by an effective multilateral system for the protection of intellectual property rights.

It is increasingly clear that further reform of European farm policy, designed to address its distorting impact on international trade and to reduce the negative impact of EU subsidies on producers in developing countries, will be a pre-requisite to the successful completion of the Doha Development Agenda. Irish negotiators will ensure that such reforms are structured in a way that maintains the competitiveness of Irish agribusiness, and provides adequate time and mechanisms for Irish farmers to transition to new production methods. Such compromises should be considered, however, in the context of the significant potential benefits from the new round of negotiations to the internationally traded manufacturing and service sectors in Ireland.

In order to ensure that the outcomes from the new WTO round of negotiations are, on the whole, acceptable to Ireland from an economic perspective (particularly given the compromises that may be required on EU farm policy), Ireland must closely monitor the development of the negotiations to ensure that EU negotiators achieve the key objectives for Irish industry set out in this report. We must also, through active participation in EU and WTO councils, continue to play a key role in shaping the international regulatory environment to suit our enterprise development needs and policies. Over the coming months and years, we must also closely monitor developments at the WTO to quickly identify opportunities and threats for Irish enterprise policy arising out of the negotiations, and to adapt Irish enterprise policy accordingly.

Appendix 1

List of Public Sector and Industry Bodies that Participated in the Consultation Process

Industry Bodies

Irish Exporters' Association

Chambers of Commerce of Ireland

International Chambers of Commerce

Irish Bankers' Federation

Institute of Chartered Accountants

The Financial Services Industry Association

Food and Drink Federation

Information and Communications Technology Federation

Irish Clothing and Textiles Alliance

Irish Engineering Enterprises Alliance

Irish Pharmaceutical and Chemical Manufacturers' Federation

Irish Software Association

IBEC Trade Federation

Irish Association of International Express Carriers

The Irish Recorded Music Association

Public Sector Bodies

Department of Agriculture and Rural Development

Department of Enterprise, Trade and Employment

Department of Communications, Marine and Natural Resources

Department of Transport

Enterprise Ireland

IDA Ireland

An Bord Bia

Irish Maritime Development Office

The Competition Authority

Revenue Commissioners (Customs Consultative Committee)

Appendix 2

List of Useful Trade-Related Websites

World Trade Organisation	www.wto.org
European Commission DG Trade	trade-info.cec.eu.int/europa/index_en.php
EU's Market Access Database	mkaccdb.eu.int
OECD Trade Directorate	www.oecd.org
UN Conference on Trade and Development	www.unctad.org
World Bank Trade Division	www.worldbank.org
UK Department of Trade and Industry – Trade Section	www.dti.gov.uk
United States Trade Representative	www.ustr.gov
Forfás (the enterprise development authority)	www.forfas.ie
Forfas Trade Website	www.openmarkets.ie
Department of Enterprise, Trade and Employment	www.entemp.ie
An Bord Bia (the Irish Food Board)	www.bordbia.ie
An Bord Fáilte (the Irish Tourism Board)	www.ireland.travel.ie
An Bord Iascaigh Mhara (the Irish Fisheries Board)	www.bim.ie
Department of Agriculture and Rural Development	www.irlgov.ie/daff/default.htm
Department of Foreign Affairs	www.irlgov.ie/iveagh/default.htm
Enterprise Ireland (Irish-owned industry)	www.enterprise-ireland.com
IDA Ireland (foreign-owned industry)	www.ida.ie
Irish Government	www.irlgov.ie
The Chambers of Commerce of Ireland	www.chambersireland.ie
The Irish Business and Employers' Confederation	www.ibec.ie
The Institute of International Trade of Ireland	www.irishexporters.ie
The Irish Exporters' Association	www.irishexporters.ie

Publication List

The 4th Framework Programme in Ireland	April 2001
Commercialisation of Publicly Funded Research <i>Irish Council for Science, Technology & Innovation (ICSTI)</i>	April 2001
The Third Report of the Expert Group on Future Skills Needs <i>Responding to Ireland's growing skill needs</i>	July 2001
Forfás Annual Report 2000	August 2001
Annual Employment Survey 2000	September 2001
Statement of Outward Direct Investment	October 2001
State Expenditure on Science & Technology, 2000	December 2001
Research and Development in the Public Sector, 2000	December 2001
Key Waste Management Issues in Ireland	December 2001
Annual Competitiveness Report, 2001 & The Competitiveness Challenge <i>National Competitiveness Council</i>	December 2001
The Labour Market Participation of Over 55s in Ireland <i>Expert Group on Future Skills Needs</i>	January 2002
International Trade and Investment Report	February 2002
Biotechnology <i>Irish Council for Science, Technology & Innovation (ICSTI)</i>	February 2002
Enlargement of the European Union Forfás Submission to the National Forum on Europe	February 2002

Broadband Investment in Ireland	March 2002
Research & Development in the Business Sector 1999	May 2002
Comparative Consumer Prices in the Eurozone & Consumer Price Inflation in the Changeover Period	June 2002
Forfás Annual Report, 2001	July 2002
e-Business: Where we are and where do we go from here	August 2002
Measuring and Evaluating Research <i>Irish Council for Science, Technology & Innovation (ICSTI)</i>	August 2002
Legislating for Competitive Advantage in e-Business and Information Communications Technologies	October 2002
A Strategy for the Digital Content in Ireland	November 2002
Annual Competitiveness Report 2002 & The Competitiveness Challenge Report <i>National Competitiveness Council (NCC)</i>	November 2002
State Expenditure on Science & Technology 2001	February 2003

Functions of Forfás

Is é Forfás an bord náisiúnta um polasáí agus comhairle le haghaidh fiontraíochta, trádála, eolaíochta, teicneolaíochta agus nuála. Is é an comhlacht é a bhfuil comhactaí dlíthiúla an stáit maidir le cur-chun-cinn tionscail agus forbairt teicneolaíochta dílsithe ann. Is é an comhlacht é freisin trína dciomnaítear cumhachtaí ar Fhiontraíocht Éireann le tionscail dúchais a chur chus cinn agus ar ghníomhaireacht Forbartha Tionscail na hÉireann (GFT Éireann) le hinfheistiú isteach sa tír a chur chun tosaigh. Is iad feidhmeanna Fhorfás:

- ▶ comhairle a chur ar an Aire ó thaobh cúrsaí a bhaineann le forbairt tionscail sa Stát
- ▶ comhairle maidir le forbairt agus comhordú polasaithe a chur ar fáil d'Fhiontraíocht Éireann, d'GFT Éireann agus d'aon fhoras eile dá leithéid (a bunaíodh go reachtúil) a d'fhéadfadh an tAire a ainmniú trí ordú
- ▶ forbairt na tionsclaíochta, na teicneolaíochta, na margaíochta agus acmhainní daonna a spreagadh sa Stát
- ▶ bunú agus forbairt gnóthas tionsclaíoch ón iasacht a spreagadh sa Stát, agus
- ▶ Fiontraíocht Éireann agus GFT Éireann a chomhairliú agus a chomhordú ó thaobh a gcuid feidhmeanna.

Forfás is the national policy and advisory board for enterprise, trade, science, technology and innovation. It is the body in which the State's legal powers for industrial promotion and technology development have been vested. It is also the body through which powers are delegated to Enterprise Ireland for the promotion of indigenous industry and to IDA Ireland for the promotion of inward investment. The broad functions of Forfás are to:

- ▶ advise the Minister on matters relating to the development of industry in the State
- ▶ to advise on the development and co-ordination of policy for Enterprise Ireland, IDA Ireland and such other bodies (established by or under statute) as the Minister may by order designate
- ▶ encourage the development of industry, technology, marketing and human resources in the State
- ▶ encourage the establishment and development in the State of industrial undertakings from outside the State, and
- ▶ advise and co-ordinate Enterprise Ireland and IDA Ireland in relation to their functions.

Board Members

Peter Cassells	<i>Chairman</i>
Martin Cronin	<i>Chief Executive, Forfás</i>
Sean Dorgan	<i>Chief Executive, IDA Ireland</i>
Dan Flinter	<i>Chief Executive, Enterprise Ireland</i>
Paul Haran	<i>Secretary General, Department of Enterprise, Trade & Employment</i>
Professor Michael Hillery	<i>Chair of Manufacturing Engineering University of Limerick</i>
Rody Molloy	<i>Director General, FÁS</i>
William Murphy	<i>Partner, Tynan Dillon and Company</i>
Feargal O'Rourke	<i>Partner, Taxation Pricewaterhouse Coopers</i>
Professor Yvonne Scannell	<i>Professor at Law, Trinity College</i>
Toni Wall	<i>Managing Director, Wall-2-Wall Ltd</i>
Jane Williams	<i>Managing Director, The Sia Group Ltd</i>

