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Directorate General for Research

WORKING PAPER

THE WORLD TRADE ORGANISATION
AND
THE EUROPEAN COMMUNITY

External Economic Relations Series

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FOREWORD

As the global economy becomes ever more integrated, the proper implementation of rules governing the multilateral trading system has become increasingly important. In response to the perceived inability of the GATT act as an effective guarantor of such rules, the states participating in the Uruguay Round of multilateral trade negotiations agreed to create a new and stronger international organisation to oversee world trade. This organisation is called the World Trade Organisation (WTO) and it was officially established on 1 January 1995.

This Working Paper aims to provide an introduction to all the basic features of the WTO, and to examine how the European Community in general, and the European Parliament in particular, will relate to this new international organisation. The extensive annexes are designed to serve as a useful point of reference, bringing together all the most important basic texts, including the Agreement Establishing the WTO and the relevant resolutions of the European Parliament. The authors wish to express their gratitude for the valuable comments provided by Mr. Christian AUGUSTIN of the Directorate General for Committees and Delegations of the European Parliament.

DIRECTORATE GENERAL FOR RESEARCH

August 1995.

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LIST OF ABBREVIATIONS USED

ACP	African, Caribbean and Pacific Group
DSB	Dispute Settlement Body
DSM	Dispute Settlement Mechanism
EC	European Community
ECJ	Court of Justice of the European Communities
ECSC	European Coal and Steel Community
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
IBRD	International Bank for Reconstruction and Development
IGC	Intergovernmental Conference
IMF	International Monetary Fund
ILO	International Labour Organisation
ITO	International Trade Organisation
MEP	Member of the European Parliament
MFN	Most Favoured Nation clause, Article I of the GATT
OECD	Organisation for Economic Cooperation and Development
TPRM	Trade Policy Review Mechanism
TRIMS	Trade-related Investment Measures
TRIPS	Trade-related Aspects of Intellectual Property Rights
US	United States
WTO	World Trade Organisation

Note: the term European Community (EC) has been preferred to European Union (EU) throughout this paper. This is because, from a legal point of view, it is specifically the EC, and not the EU, which is a member of the WTO.

I. INTRODUCTION

The Uruguay Round of multilateral trade negotiations was launched in Punta del Este, Uruguay, in September 1986. After seven years of tortuous and at times precarious negotiations the Final Act of the Uruguay Round was signed by Ministers of GATT contracting parties in Marakesh on 15 April 1994. GATT Director General Peter Sutherland hailed the conclusion of the Uruguay Round as "a defining moment in modern economic and political history." It was, he said, "a truly remarkable achievement" which would lead to "more trade, more investment, more jobs and more growth for all."

A more sceptical analysis might suggest that the real achievement of the Uruguay Round was that it managed to be concluded at all, so reducing the possibility of a damaging split between the world's major trading blocks. It is certainly true that agreement was only reached by fudging or postponing some of the more difficult issues.

There are three fundamental aspects to the results of the Uruguay Round. They are:

1. A detailed time-table for **far-reaching tariff cuts**, unprecedented both in terms of the number of products covered and the depth of the cuts to be made. Tariffs will be reduced on average by around 40%, which comfortably exceeds the 30% target originally set at Punta del Este. The income gains resulting from these tariff reductions could be as much as 235 billion dollars annually by 2002, while the annual trade gains could reach 755 billion dollars.¹
2. The **inclusion of certain new sectors** which had not previously been dealt with in multilateral trade negotiations. The results of the Uruguay Round mean that almost every sector of world trade is now covered by a multilateral trade agreement. The most important sectors that have been included for the first time are:
 - i. **Services** - covered by the General Agreement on Trade in Services (GATS)
 - ii. **Intellectual property** - covered by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
 - iii. **Investment** - covered by the Agreement on Trade-Related Investment Measures (TRIMS)
 - iv. **Agriculture** - covered by an all-embracing approach

The agreements reached in most of these new areas are far from complete, however, and some of the most difficult issues, e.g. financial services and telecommunications, still remain to be resolved.

3. An agreement to set up the **World Trade Organisation (WTO)**. The WTO formally came into existence on 1 January 1995. It has a more integrated structure and is more institutionally coherent than the GATT. By the end of 1996 the WTO is due to have replaced the GATT completely as the organisation responsible for: administering the results of multilateral trade negotiations; organising further negotiations on trade liberalisation; and resolving disputes that arise between members. It will be helped in this latter task by the creation of a new and stronger Dispute Settlement Mechanism.

¹ GATT INFORMATION AND MEDIA RELATIONS DIVISION, "Increases in market access from the Uruguay Round", *News of the Uruguay Round*, April 1994.

According to the GATT Secretariat, the creation of the WTO was "an event almost as important as the establishment of the GATT 47 years ago".²

This paper focuses on the third of these aspects: the creation of the WTO. The emphasis is therefore on institutional issues rather than on issues relating to market access. A central aim has been to examine the implications of the creation of the WTO for the conduct of EC trade policy. Particular attention has been given to the role of the European Parliament in ensuring democratic control over the activities of the EC in the WTO.

² GATT INFORMATION AND MEDIA RELATIONS DIVISION, "The World Trade Organisation", *News of the Uruguay Round*, April 1994.

II. THE WORLD TRADE ORGANISATION

A full appreciation of the significance of the creation of the WTO requires a historical perspective. In particular it also requires an understanding of the failings of the GATT. This section therefore provides a brief outline of the previous attempt to establish an International Trade Organisation (ITO), the subsequent establishment and functioning of the GATT, and its eventual replacement by the WTO.

i) Background: from the GATT to the WTO

a) Failure of the ITO and creation of the GATT

It was originally intended that the post-war international economic order would consist of three institutions: the World Bank, the International Monetary Fund and an International Trade Organisation. Although the first two were successfully established in 1944, the International Trade Organisation never came into being. This was due to opposition within the United States which meant that the Charter of Havana, drawn up in 1947 as the founding document of the ITO, was never voted on by the United States Congress.

The need for some kind of international body to administer global trading rules was still widely recognised, however. Therefore Part IV of the Charter of Havana, relating to commercial policy, was rescued and its provisions accepted by 23 states. These provisions, known as the General Agreement on Tariffs and Trade (GATT) came into force on 1 January 1948. The GATT was initially implemented as a temporary solution, designed to last until such time as the ITO was established. In practice, the GATT survived alone for 46 years. By the time the Uruguay Round was concluded there were 123 GATT contracting parties, and this had increased to 128 by early 1995.³

b) Principles and objectives of the GATT⁴

The GATT has worked for the progressive liberalisation of world trade on the basis of a number of principles and objectives. These are:

1. Non-discrimination.

The principle of non-discrimination is the most fundamental principle of the GATT.

- One aspect of non-discrimination, as enshrined in Article I of the GATT, is the so-called Most-Favoured Nation clause (MFN) which applies between countries. It calls for concessions contained in any agreements signed between two or more GATT contracting parties be extended to all other contracting parties, including non-signatories to that particular agreement.⁵ In short, it seeks to multilateralise the benefits of bilaterally

³ See Annex I for the current state of GATT and WTO membership.

⁴ See LONG, Oliver, *Law and its limitations in the GATT Multilateral Trading System*, Dordrecht, (Graham and Trotman/Martinus Nijhof) 1987.

⁵ The MFN clause, Article I of the GATT, states that "any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties."

agreed trade agreements. Obligations under the MFN rule can be waived for the creation of customs unions and free trade areas.⁶

The other aspect of non-discrimination is the principle of National Treatment which applies between foreign and domestic enterprises. This principle obliges any contracting party to treat products imported from any other contracting party in the same way as it treats its own domestic products with regard to taxation and regulations.⁷ National treatment is an important issue in disputes relating to non-tariff barriers.

2. Special and more favourable treatment for developing countries.

Developing countries are not asked for tariff concessions in order to obtain MFN status.

3. Elimination of quantitative restrictions and prohibition of export subsidies.

Import quotas are theoretically outlawed under the GATT.⁸ There are, however, a number of important exceptions to this rule, including the right to impose import restrictions in order to stabilise national agricultural markets. Export subsidies are also considered to distort competitive conditions and thus form an obstacle to free trade.⁹

4. Tariffs as the only legal instrument of protection.

Unlike import quotas, customs duties are not expressly forbidden under the GATT. The General Agreement allows for relative protection in this respect. They are, however, to be gradually reduced via negotiations conducted on the basis of reciprocity and mutual advantage. The principle of reciprocity aims to ensure that there is a balance in the concessions made by contracting parties in their efforts to liberalise trade. This principle is not set down in any one specific article of the GATT, but rather it derives from a number of different articles.¹⁰

5. Transparency.

All relevant trade legislation should be notified to the contracting parties. The obligation makes arbitrary changes in legislation (e.g. rules of origin) more difficult and provides legal certainty for the economic actors.

c) Positive results of the GATT

The Uruguay Round was the eighth round of multilateral trade negotiations to be concluded within the GATT framework. The Tokyo Round (1973-79) and the Kennedy Round (1964-67) were its most immediate predecessors. Although not nearly as ambitious or complex as the Uruguay Round, both did achieve significant results in their own right. The Kennedy Round led to 35% cuts in industrial tariffs, with the concessions made covering about 40 billion dollars of trade overall. The Tokyo Round reduced the weighted average tariff on

⁶ Article XXIV

⁷ Article III

⁸ Article XI.

⁹ Article XVI

¹⁰ The Preamble of the GATT addresses the need for reciprocity, and it is also important in the following articles: Article XXVIII bis (tariff reductions), Article XXVIII (modification of schedules for liberalisation) and Article XXXIII (rules for accession of new contracting parties).

manufactured goods in the world's nine most important industrial markets from 7% to 4.7%, and covered about 300 billion dollars of world trade.

Although the GATT principles and rules were not always respected (see below), they were vitally important as a reference point and a yardstick against which the unilateral trade policies of contracting parties could be judged and, where necessary, condemned. The intrinsic value of the GATT principles is evident from the fact that they remained intact even when the GATT was overhauled and succeeded by the WTO.

d) Weaknesses of the GATT

Although the GATT soon developed most of the characteristics of a real international organisation, it continued to suffer from two basic weaknesses. Firstly, neither its institutional structure nor its decision-making rules were sufficiently robust to make the GATT an effective guarantor of the global multilateral trading system. Secondly, although the GATT did evolve, de facto, into a real international organisation, it was never given the explicit legal personality that is necessary in order to command respect as an independent actor on the international stage.

These weaknesses in the authority of the GATT were highlighted by four specific problems:

1. Disregard for GATT rules.

Many important GATT rules and procedures were in practice often ignored. Bilaterally agreed import-export limits, such as Voluntary Export Restrictions (VER) or Orderly Market Arrangements (OMA) were frequently preferred to the multilateralisation of agreements demanded by the Most-Favoured Nation clause and the principle of non-discrimination. These bilateral agreements constitute a violation of the non-discrimination principle in the sense that they disregard the safeguard provision under Article XIX of GATT. The provision can only apply to all contracting parties (*erga omnes*) and cannot be invoked to one single country.¹¹ Similarly, the GATT procedure for the settlement of disputes was not always adhered to. Certain of the larger players opted instead for unilateral action if they believed that their legitimate trade interests were being infringed by the actions of another country. The most commonly cited example in this respect is the use by the US of its Section 301 legislation in order to take unilateral retaliatory action against countries not opening their markets to US goods.

2. Weakness of the GATT dispute settlement procedure.

Even when the GATT dispute settlement procedure was used correctly, it was not a very powerful weapon in the defence of a fair multilateral trading system. Its fundamental weakness was the requirement of consensus in order to establish a panel to examine a case, and then again for the ruling of that panel to be adopted.¹² This gave the country that was the object of the original complaint the right to veto the initiation of proceedings. It also meant that either party to the dispute could veto the adoption of the panel ruling at a later date. In terms of normal legal proceedings, this is equivalent to giving the suspect the right to refuse to stand trial in the first place and then giving both the suspect and the victim the right to reject any verdict with which they do not agree. Although the procedure did

¹¹ The only exception to this rule is the Multi Fibre Agreement (MFA) which allows for quantitative import restrictions contrary to Article XI.

¹² A panel is a temporary body consisting of a number of experts whose duty it is to examine the cases put forward by the parties to the dispute, and, where necessary, to submit to the General Council a written report containing a ruling and recommendations.

sometimes produce results - and some parties did accept rulings that went against their interests - it was clearly not a procedure capable of ensuring the effective carriage of justice in every case.

3. Fragmentation and free-ridership.

Following the incomplete conclusion of the Tokyo Round in 1979, various different agreements covering specific areas of trade policy were made outside the main GATT framework. These supplementary agreements related to anti-dumping, subsidies, customs valuation, technical barriers to trade, and other non-tariff barriers, and they were signed by less than one third of the GATT contracting parties. This resulted in a fragmentation of the GATT system. The fundamental problem arising from such fragmentation, apart from reducing transparency and adding to the complexity of the legal arrangements,¹³ was that it led to the abuse of the GATT principle of non-discrimination. Many countries were tempted to free-ride on these supplementary agreements. They could choose not to sign the extra agreements and so avoid taking on further obligations of trade liberalisation themselves, secure in the knowledge that the non-discrimination principle would oblige those countries that did sign the new agreements to extend the same commitments to all GATT contracting parties, whether signatories of the new agreements or not. The principle of non-discrimination therefore sometimes worked as a disincentive to entering into further negotiations leading to greater trade liberalisation. It also served to undermine another principle at the heart of the GATT system, namely the principle of reciprocity in commitments undertaken by contracting parties. The only means of re-establishing the compatibility of non-discrimination and reciprocity was to insist that as far as possible all contracting parties signed all the agreements. This is what the WTO has done.

4. Limited coverage

GATT does not cover the whole range of international economic activity. Major areas such as services, trade-related investments and intellectual property are not included. These subjects have become increasingly important in the context of global economy.

Overall, these weaknesses meant that the GATT could not be relied upon to guarantee those elements vital to the stability of the multilateral trading system: predictability, mutual trust, and respect for the rule of the law. The threat of a complete breakdown in the multilateral trading system was at times very real, not least when the successful completion of the Uruguay Round hung in the balance towards the end of 1993. This created an environment of constant legal insecurity that to some extent held back the investment and commercial activity of international economic operators. Furthermore, if the multilateral trading system were ever to be replaced by disorder and anarchy, this would have a considerable knock-on effect for world security as a whole.

e) Creation of the WTO

The replacement of the GATT had not been an official objective at the launch of the Uruguay Round in 1986 and one powerful player, the United States, was at first very opposed to the creation of a new and more powerful organisation. The US has traditionally been reluctant to accept restrictions on the sovereignty of its own legislature in matters relating to trade policy. Although US reservations still made for tough negotiations, in the end the decision to replace the GATT with a new organisation was one of the less controversial results of the Uruguay Round.

¹³ Different dispute settlement procedures applied for each of these Agreements.

Two factors help to explain why the replacement of the GATT forced itself on to the agenda of the Uruguay Round. Firstly, policy-makers and economic operators were becoming increasingly conscious of the failings of the GATT as outlined above. More fundamentally, however, there was a growing realisation, not least in the US itself, that the ever increasing levels of global economic interdependence have severely reduced the effectiveness of unilateral action. As national governments become less able to protect their national economies from the effects of developments in the global economy, so they become more amenable to the idea of global rule-making and policy-making bodies.¹⁴ Together, these two factors lead the participants in the Uruguay Round to seek to create an institution capable of guaranteeing order and predictability in world trade through the proper enforcement of strong multilateral trading rules.

By replacing the "temporary" GATT with a stronger and more institutionalised international organisation of true legal standing, the participants in the Uruguay Round had nominally succeeded in completing the post-war international economic order. The fruit of their work was not, however, called the International Trade Organisation as had been intended in 1948, but the World Trade Organisation.

The WTO officially came into existence on 1 January 1995. During 1995 the GATT and the WTO will exist in parallel. Where there is overlap or conflict between the rules of the two organisations, the rules of the WTO will prevail. By the end of 1995 it is expected that virtually all the GATT contracting parties will have formally joined the WTO, at which time the GATT will naturally cease to exist. Membership of the WTO applies automatically to those GATT contracting parties who have ratified all the agreements contained in the Final Act of the Uruguay Round.¹⁵

From a strictly legal point of view, the WTO is not the successor of the GATT. In practice, however, the WTO is very much the successor of the GATT, since it is expected that all members will agree to stop applying GATT rules once they have joined the WTO.¹⁶ Furthermore, there is a high degree of continuity between the GATT and the WTO in terms of principles, procedure and personnel. Firstly, the fundamental GATT principles have remained intact, the only alterations being more detailed and up to date interpretations of some articles.¹⁷ Secondly, Article XVI, paragraph 1, of the Agreement Establishing The World Trade Organisation (hereafter referred to as the Agreement) states that in general "the WTO shall be guided by the decisions, procedures and customary practices followed by the Contracting Parties to GATT 1947 and the bodies established in the framework of GATT 1947".¹⁸ Finally, paragraph 2 of the same article also says that as far as possible the GATT Secretariat shall become the secretariat for the WTO. The important exceptions to this

¹⁴ For a more detailed discussion of the issue of global economic interdependence, see EUROPEAN PARLIAMENT (DIRECTORATE GENERAL FOR RESEARCH), *Economic Interdependence - New policy challenges, Proceedings of the Public Hearing held by the Committee on External Economic Relations, Brussels, 28 September 1993*, External Economic Relations Series, W-7, 1994.

¹⁵ See Annex I for the current state of GATT and WTO membership. See Annex II for the full text of the Final Act of the Uruguay Round, signed at Marakesh on 15 April 1994.

¹⁶ Because of the fully institutionalised legal status of the WTO, it is correct to talk of WTO "members". Countries participating in the GATT are known as GATT "contracting parties".

¹⁷ The most significant agreements on interpretation involved the following: Article XVII (state monopolies), Article XXIV (customs unions and free trade areas), Article XXVIII (modification of schedules for liberalisation), and the disciplines relating to the balance of payments exception.

¹⁸ In the Final Act of the Uruguay Round the GATT contracting parties agreed to submit the Agreement establishing the World Trade Organisation to their respective national bodies for ratification. See Annex III for the full text of the Agreement.

general theme of continuity, especially the introduction of a new Dispute Settlement Procedure, are the subject of the remaining sections of this chapter.

In theory, the creation of the WTO will bring to an end the series of mammoth and potentially unmanageable negotiating rounds which were the hall-mark of the GATT. Instead, the WTO is designed to act as a permanent forum for more ongoing negotiations.

ii) The WTO as a part of a "single undertaking"

All the multilateral agreements that were reached at the conclusion of the Uruguay Round have to be accepted as one "single undertaking". In practice, this means that membership of the WTO is only open to those countries which have accepted all the multilateral agreements, including those relating to services, agriculture, intellectual property rights, and trade-related investment measures.

This is a direct response to the problem of free-ridership that developed in the GATT. By demanding that all WTO members sign up to all the multilateral agreements, the principle of non-discrimination should cease to undermine the principle of reciprocity. It should therefore no longer be possible for some countries to receive the benefits of the MFN clause unless they make reciprocal commitments.

However, the WTO does not administer all agreements of the Uruguay Round. Some have been kept plurilateral such as public procurement, civil aviation and trade in dairy and bovine products. They are laid down in Annex IV of the Agreement establishing the WTO. These agreements must not be adhered to in order to become a member of the WTO.

iii) Objectives and functions

a) Objectives

The official objectives of the WTO as laid down in the Preamble to the Agreement are the much same as those of the GATT i.e. raising standards of living and incomes; ensuring full employment; expanding production and trade; and making optimal use of the world's resources. There are, however, three significant additions in the WTO objectives that are worthy of note:

1. all the objectives now apply also to trade in services as well as to trade in goods;
2. the concept of "sustainable development" is included in the commitment to help make optimal use of the world's resources;¹⁹
3. there is a formal recognition of the need to assist developing countries in securing a greater share in the growth of international trade.

b) Functions

The WTO will seek to achieve its objectives in carrying out the following five major functions which have been attributed to it in Article III of the Agreement:

¹⁹ Sustainable development can be defined as development that does not compromise the ability of future generations to meet their economic needs and aspirations. See WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *Our Common Future*, Oxford, 1987.

1. **Oversee and facilitate the implementation of all agreements and legal instruments negotiated in connection with the Uruguay Round. The WTO is a single institutional framework encompassing the GATT (as modified by the Uruguay Round), all agreements and arrangements concluded under its auspices, and the complete results of the Uruguay Round. The WTO will also be responsible for the management of those plurilateral arrangements not covered by the GATT.²⁰ This is a central to the idea of making the Uruguay Round a "single undertaking." All countries joining the WTO must have accepted all other aspects of the Uruguay Round. The WTO therefore has the legal ability to oversee all the Uruguay Round agreements for all WTO members to whom they apply.**
2. **Provide a forum for all negotiations among members concerning their multilateral trade relations. It is intended that the WTO will replace the previous system of negotiation "rounds" with a structure in which permanent and more focused negotiations take place at different levels. These negotiations should take place on the basis of action programmes adopted by the WTO Ministerial Conference.**
3. **Administer the Understanding on Rules and Procedures Governing the Settlement of Disputes. This Understanding is the basis of the new Dispute Settlement Mechanism (DSM), which is examined at greater length in section v) of this chapter.**
4. **Administer the Trade Policy Review Mechanism (TPRM). The TPRM was introduced early on in the Uruguay Round negotiations, at the time of the Mid-term Review held in Montreal in 1988, and was confirmed in the final results of the Round. It is a mechanism that provides for an independent review of the trade policies of WTO members once every two years. It is designed to lead to greater openness and transparency in the conduct of trade policy and to ensure better compliance with GATT/WTO rules.**
5. **Cooperate with the IMF and the IBRD to achieve greater coherence in global economic policy making. This function should be possible now that the WTO has completed the post-war international economic order.**

iv) Structure²¹

The WTO is headed by a **Ministerial Conference**, formed of representatives of all the members, which will meet at least once every two years. The Ministerial Conference has overall responsibility for the WTO and has the authority to take decisions on all matters under any of the Multilateral Trade Agreements.

The **General Council**, also formed of representatives of all the members, is responsible for carrying out the functions of the WTO in the periods between meetings of the Ministerial Conference. The General Council has three other important duties. Firstly, it is to act as the Dispute Settlement Body (DSB) when such a body is required by the new Dispute Settlement Mechanism (see section v) of this chapter). Secondly it is to carry out the responsibilities of the Trade Policy Review Body in accordance with the agreement on the Trade Policy Review Mechanism. Thirdly, the General Council is also given the task of establishing three specialised Councils and overseeing their operation. The three Councils are: a **Council for Trade in Goods**, a **Council for Trade in Services**, and a **Council for Trade-Related Aspects of Intellectual Property Rights**. Each Council will supervise the functioning of the multilateral

²⁰ Plurilateral agreements are those agreements which are specifically not applicable to all members. The most important plurilateral agreement reached at the time of the Uruguay Round was the one relating to government procurement.

²¹ Article IV of the Agreement.

agreements in its respective area of concern, and has the right to establish further subsidiary bodies to administer the various arrangements as required.

The Agreement also provides for a number of specialised Committees. These are: a **Committee on Trade and Development**, a **Committee on Balance-of-Payments Restrictions**, and a **Committee on Budget, Finance and Administration**. While the specialised Councils are responsible for administering the respective multilateral agreements, the Committees serve as forums for discussing and developing policy on a wider range of issues. As part of its functions, the Committee on Trade and Development is given the specific task of periodically reviewing the special provisions in favour of the least-developed country members and making any appropriate recommendations on the basis of its findings.

The WTO will also have a **Committee on Trade and the Environment**, although its creation does not form part of the Agreement Establishing the World Trade Organisation. Instead, Ministers decided in Marakesh to ask the General Council of the WTO to use its first meeting to establish a Committee on Trade and Environment open to all members of the WTO. The Committee is charged with identifying the precise nature of the trade-environment relationship and with making recommendations on modifications to the provisions of the multilateral trading system where this is deemed necessary in order to promote sustainable development. Although quite a lot of publicity has surrounded the creation of the Committee, a similar body did exist within the GATT framework. The GATT had a long-dormant Group on Environmental Measures and International Trade (EMIT Group) which was reactivated in 1991 as part of a learning and confidence building process.²²

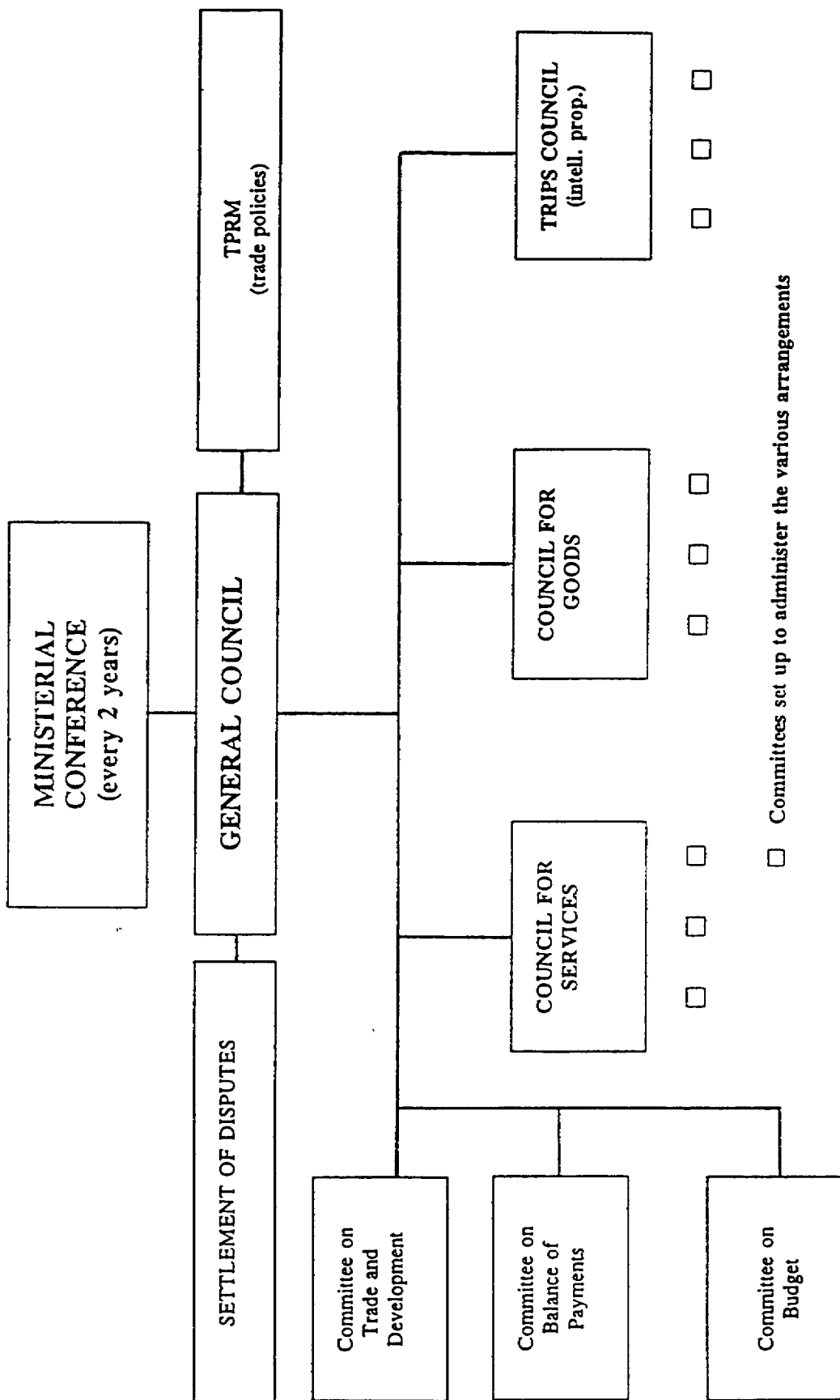
The administration of the WTO will be the responsibility of the **WTO Secretariat**, which will be headed by a **Director-General**. Neither the Director-General nor the personnel of the Secretariat are allowed to "seek or accept instructions from any government or any other authority external to the WTO".²³ The Director-General will be appointed by the Ministerial Conference. It is generally reckoned that the first Director-General of the WTO will have to be strong and politically agile if the WTO is to live up to expectations.²⁴

²² EUROPEAN PARLIAMENT, *Resolution of 24 March 1994 embodying the recommendations of the European Parliament to the Commission concerning the negotiations in the Trade Negotiations Committee of GATT on an agreement on a Trade and Environment Work Programme*, Minutes of the Sitting, Part II. Parliament pressed to reactivate the dormant working group and to raise its status into a full standing committee.

²³ Article VI, paragraph 4, of the Agreement.

²⁴ It took the WTO members a long time to agree on who the first Director General should be. Opinion was dangerously divided along geographical lines. The EU and most states of the African, Caribbean and Pacific Group (ACP) supported the candidature of Mr. Ruggiero, a former Italian Trade Minister. The remaining WTO members were split between former Mexican President Carlos Salinas, who had support in North and South America, and Mr. Kim Chul-su, Trade Minister of South Korea, who had the backing of most Asian countries. Meanwhile Peter Sutherland, the outgoing Director General of the GATT, had agreed to stay in his post until mid-March 1995 in order to allow more time for the choice of his successor. Finally a clear consensus was reached in favour of Mr Ruggiero who took over the reigns of the WTO on 1 May 1995.

STRUCTURE OF THE WTO



Committees set up to administer the various arrangements

v) Decision-making²⁵

In accordance with previous practice in the GATT, most decisions are made on the principle of consensus. Consensus is deemed to exist if no member makes a formal objection. When a decision cannot be reached by consensus, then recourse to voting is now the institutionalised norm. In the GATT, recourse to voting was exceptional. Whenever voting is necessary, it is done on the basis of one country, one vote, with the majority of votes cast deciding the outcome. The apparently contradictory practice of making decisions by consensus, while at the same time keeping the "threat" of a vote, should lead to constructive negotiations and mutual concessions between parties in disagreement.

There are two important instances in which simple majority voting does not apply. These two instances are the interpretation of the provisions of the agreements, and the granting of a waiver of a member's obligations. They are areas in which the powerful industrialised countries are not prepared to be outvoted by the developing countries that constitute the majority of WTO members. For this reason both areas were also exceptions to the majority vote rule under the GATT. However the WTO in fact imposes stricter conditions than the GATT for a decision to be made in each case. For interpretation and waivers the required majority is now 3/4 of the members, whereas under the GATT it was 2/3 of the votes cast representing at least half the contracting parties.

Furthermore, the granting of waivers in the WTO is controlled more strictly than it was in the GATT. All applications for waivers will be closely examined in terms of justification, time limits and the possibility of recourse to the dispute settlement mechanism. The practice of "perpetual waivers" that had developed under the GATT should therefore no longer be possible.

As far as amendments to the agreements are concerned, any member may make proposals to the Ministerial Conference and the General Council. Those amendments which relate to general principles, such as MFN treatment, require unanimous agreement in order to be accepted. Other amendments require a 2/3 majority.

The procedure for the admission of new members remains the same as it was in the GATT i.e. 2/3 majority in the Ministerial Conference.

vi) The Dispute Settlement Mechanism

The new Dispute Settlement Mechanism (DSM) is probably the single most important element of the WTO. If the DSM works well, and, crucially, if the powerful members can be persuaded to accept even those rulings that go against their interests, then the WTO will have gone a long way towards fulfilling many of the expectations that surrounded its launch. Respect for its rulings is crucial for the credibility of the WTO.

The details of the new DSM are set out in the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereafter referred to as the Understanding).²⁶ The provisions of the new DSM are far more specific than those of the GATT, and the Understanding runs to a total of 27 articles, compared to just 2 for the GATT dispute settlement procedures.

²⁵ Article IX of the Agreement.

²⁶ The Understanding on Rules and Procedures Governing the Settlement of Disputes is Annex 2 of the Agreement Establishing the World Trade Organisation. See Annex IV of this paper for the full text of the Understanding.

According to the Understanding, "the dispute settlement system of the WTO is the central element providing security and predictability to the multilateral trading system".²⁷ It seeks to provide such security and predictability by replacing the "law of the jungle" with a consistent mechanism that has most of the characteristics of formal legal proceedings. Provided that the members keep faith in the DSM and abide by its judgements, there should be no need for unilateral acts of retribution or protection. It would therefore be a major improvement on the situation that existed under the GATT regime.

a) Functioning of the DSM

The new DSM can be split into a six stage process:²⁸

1. Consultations.

The first stage of settling disputes involves consultations between the members concerned. Any member should reply to a request for consultation within 10 days, and the consultations themselves should begin within 30 days of the initial request. At this stage the Dispute Settlement Body (DSB) must be notified of the consultations in writing. The General Council acts as the DSB. If the consultations fail to produce an agreement between the parties to the dispute, then the parties may at this stage refer the case to the Director-General for conciliation.

2. Establishment of Panels.

The complainant is entitled to ask the DSB to establish a panel to examine the case: the member concerned does not respond to a request for consultations within 10 days, or if the consultations fail to arrive at a solution after 60 days. The establishment of panel is almost automatic. Only consensus against the decision can block it. The role of the panel is to examine the case and make findings that will assist the DSB in making recommendations or in giving rulings. The parties have 20 days from the decision to establish the panel to agree on the 3 panellists. If they fail to do so within that time then the Director-General can appoint the panellists. Panellists are to act independently and will not be subject to government instructions. In order to speed up installation procedures, a list of experts will be drawn up from which panel members can easily be chosen.

3. Panel procedures.

The panel has 6 months from the time of its establishment to produce a final report. In cases of urgency this can be reduced to 3 months. Having first examined the written submissions of both parties, the panel proceeds to a first substantive meeting during which the complainant and the respondent present their arguments. At a second substantive meeting, each party makes a formal reply to the arguments of the other. The panel then produces an interim report which is submitted to the parties to the dispute. They may at that stage request a review. The period of review must not exceed 2 weeks and during that time the panel may hold further meetings. The panel then submits its final report.

4. Adoption of panel reports.

The DSB should adopt the final panel report within 60 days of its completion, unless one party notifies its decision to appeal or there is consensus against adoption of the report.

²⁷ Article 3, paragraph 2, of the Understanding.

²⁸ GATT INFORMATION AND MEDIA RELATIONS DIVISION, "The WTO Dispute Settlement Mechanism", *News of the Uruguay Round*, April 1994.

5. Appellate Review.

Either party may appeal against the final panel report, provided that such an appeal is limited to issues of law covered in the panel report and the legal interpretation developed by the panel. Appeals will be heard by a standing Appellate Body to be established by the DSB. The Appellate Body will comprise 7 persons, not affiliated with any government, who will serve 4 year terms. Only 3 members of the Appellate Body sit at any one time. The Appellate Body may uphold, modify or reverse the legal findings and conclusions of the panel. Appeal proceedings should not exceed 60 days, and can in no case exceed 90 days. The report of the Appellate Body is adopted by the DSB within 30 days of its circulation to members, unless there is consensus against its adoption. Once adopted by the DSB, the Appellate Body report must be unconditionally accepted by the parties to the dispute.

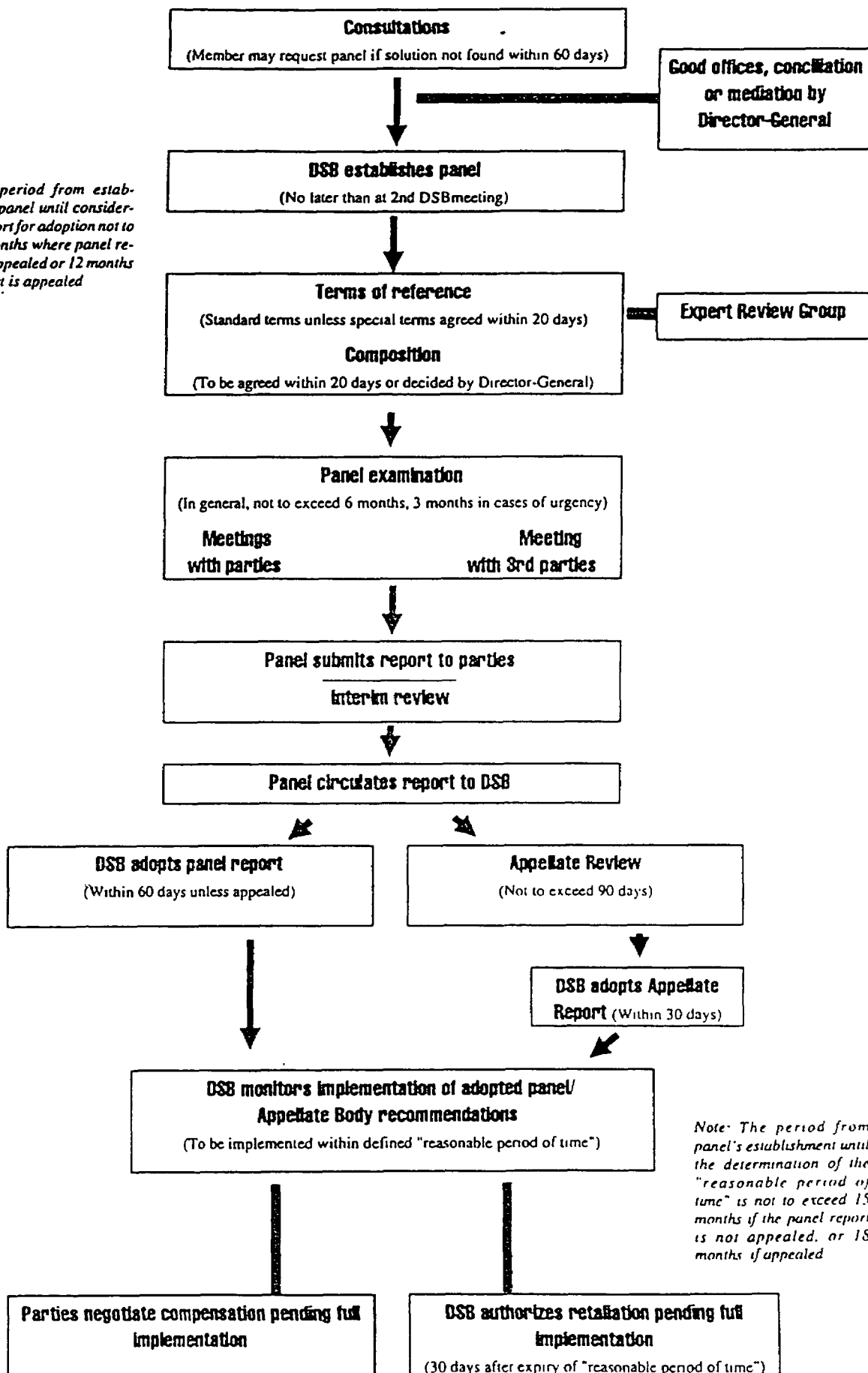
6. Implementation.

According to the Understanding, "prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all members".²⁹ If the party concerned does not act to comply within a "reasonable period of time" (set by the DSB), it must negotiate mutually acceptable compensation with the complainant. If negotiations produce no agreement within 20 days, the complainant may request authorisation from the DSB to suspend obligations or concessions against the other party. The DSB shall give authorisation within 30 days of the request unless there is a consensus against it. If the member concerned objects to the level of suspension, the matter is referred to an arbitration panel consisting of the original panel members. Arbitration should be completed within 60 days of the expiry of the "reasonable period of time." The resulting decision should be accepted by the parties concerned as final and not subject to further arbitration. The DSB then authorises the suspension of concessions in accordance with the arbitration decision unless there is a consensus against such action. The concessions should in principle be suspended in the same sector as that at issue in the original dispute, but "cross retaliation" is possible as a last resort. For the European Union it is important to note that the final means against non-compliance with the DSB rulings are retaliation instead of any form of real enforcement which would have consequences for its legal order.

²⁹ Article 21, paragraph 1, of the Understanding.

WTO Dispute Settlement Flow Chart

Note: The period from establishment of panel until consideration of report for adoption not to exceed 9 months where panel report is not appealed or 12 months where report is appealed



Note: The period from panel's establishment until the determination of the "reasonable period of time" is not to exceed 15 months if the panel report is not appealed, or 18 months if appealed

b) Implications of the DSM

This section looks briefly at the most important aspects in which new DSM of the WTO differs from previous GATT practice.

1. The new DSB (in effect the General Council) has **sole authority** to establish panels, adopt panel and appellate reports, monitor the implementation of recommendations and authorise retaliatory measures if recommendations are not implemented. Under the GATT, such authority was fragmented between the Council and various Tokyo Round Committees. The settlement of disputes with the WTO should therefore be more transparent and this will hopefully lead to a greater degree of compliance with rulings.
2. In the WTO, there now has to be **consensus against** the establishment of panels or adoption of panel reports for these decisions not to be made. In the GATT system the reverse was true: there had to be a consensus in favour of the establishment of a panel and the adoption of the report. This gave the party which was the subject of a complaint the effective right to veto the initiation of proceedings or the final ruling. Now parties to a dispute can no longer unilaterally block the establishment of a panel or reject a final panel ruling. This is of fundamental importance if the settlement of disputes is to be conducted in a fair and impartial manner.
3. A further innovation is the possibility of appealing against a final panel report to a permanent **Appellate Body**. This possibility had necessarily to be included once it was decided to prevent any party to a dispute from unilaterally blocking the establishment of a panel or rejecting the panel ruling. Together with point 2, this innovation helps to give the new DSM the appearance of formal legal proceedings. Also important in this respect is the impression of automaticity which derives from the strict time limits.
4. In an attempt to eliminate the indiscriminate use of unilateral retaliatory action, the WTO may **sanction cross-retaliation** as a last resort. This means that when a member fails to implement adopted panel recommendations, the complainant may suspend concessions to that member under an agreement different from the one covering the initial dispute. It is hoped that unilateral cross-retaliation can be better controlled and supervised now that it falls within the jurisdiction of the WTO. The acknowledgment of the legitimacy of cross-retaliation is in keeping with the integrated nature of the results of the Uruguay Round as one single undertaking. Because the WTO has responsibility for all the multilateral trade agreements, it also has the authority to sanction linkages between the various agreements.

vii) Assessment

Much of what was said and written in the wake of the conclusion of the Uruguay Round about the establishment of the WTO was probably overly optimistic. If GATT was imperfect and incomplete, then the WTO is certainly an improvement. But it would be premature to suggest that the new multilateral trade regime will now be free of the weaknesses that plagued the GATT. There is in fact a severe danger that expectations have already got too far ahead of what the WTO will actually be able to deliver.

The biggest problem is not that the participants in the Uruguay Round failed to make the WTO a significant improvement on the GATT. Three aspects stand out as an indication that the WTO is in fact a qualitative advance on the GATT: firstly, the new dispute settlement mechanism; secondly, the fact that the WTO has been accorded legal personality and fully institutionalised status; and thirdly, the fact that the WTO is a single undertaking and only open to those states that accept all the results of the Uruguay Round. These innovations

make it more likely that the multilateral trading system will genuinely operate in accordance with the rule of law.

The real problem for the WTO is how to assert its authority in the face of very powerful protectionist interest groups and national governments. The pressures for protectionism are often enormously strong and they would test the authority of even the strongest and most well established international organisation. The most that the WTO can do is perform its tasks justly and efficiently, and hope that it can thereby win the respect and confidence of all WTO members. Ultimately, and for all its improvements on the GATT, the WTO framework will only be able to guarantee a just multilateral trade system if the members themselves have the necessary self-discipline and political will to make it work.

The early signs were that such self-discipline and political will may be in short supply. Firstly, there was the protracted row over who should be the first Secretary General of the WTO, with the world's major trading blocks each backing their own favoured candidate. Secondly, as a result of supposed harm done to its operators, the US was threatening to take unilateral retaliatory action against the EC in the case of its banana regime - without referring the matter to the WTO dispute settlement mechanism.

However, credibility is the key issue for the future of the WTO. It will only become a powerful institution if the major players in world trade are prepared to respect the rules they signed themselves. If so, the rule of law in international economic relations will be considerably strengthened, which, in the long term, is the only reasonable answer to the complexity of global economy. At the same time it will be much to the advantage of the smaller countries.

III. THE EUROPEAN COMMUNITY AND THE WTO

This chapter examines the way in which the EC will operate in the WTO. The focus is very much on institutional and legal issues. The main theme is the new distribution of competences between the Commission and the Council within the WTO (and more generally the distribution of competences between the Community and its member states).

1) Background: the operation of the EC in international negotiations

a) The legal role of each institution

In order to understand how the EC will operate in the WTO it is necessary to look briefly at the basic rules that govern the conduct of EC commercial policy.³⁰

The most important treaty articles to be considered are: Article 113 EEC, the basis of the EC's Common Commercial Policy; Article 228 EEC, the central article governing the way in which the EC negotiates and concludes international agreements with third parties; and Article 238 EEC, which authorises the EC to conclude association agreements, characterised by "reciprocal rights and obligations, common action and special procedures".³¹

These articles together determine the role of each of the EC's three main institutions. They are not an entirely unambiguous and comprehensive legal code, however. Instead they are at times deliberately vague and allow for quite a wide variety of interpretations. This flexibility means that the legal texts are often supplemented by semi-official ad hoc understandings between institutions and by procedures that eventually become accepted practice. This is true, for example, of the procedures used for keeping the Parliament informed of developments during negotiations. It is also true of the way in which the Council oversees the negotiating line taken by the Commission.

Nevertheless, the treaty articles outline the following legal roles for each of the three institutions:

The Commission is given the upper hand during the negotiations. The Commission is not, however, free to negotiate as it pleases. It must respect the mandate given to it by the Council, usually in the form of a framework directive, and more generally it must negotiate terms that will eventually receive sufficient support in the Council for the agreement to be concluded. Furthermore, the Council appoints a committee of representatives who work very closely with the Commission during the course of negotiations and who try to make certain that the line taken by the Commission is as far as possible acceptable to all member states. This committee is known as the Article 113 Committee.

The second general point to be made is therefore that the Council is the dominant institution when it comes to the conclusion of agreements. The legal base used for the agreement and the nature of the agreement itself determine whether unanimity or a qualified majority is needed to conclude the agreement. In practice, most substantial agreements require unanimity.

³⁰ See ISAAC, G., *Droit communautaire général*, Paris, (Masson), 1990, pp. 91-99. Also KAPTEYN, P.J.G. and VERLOREN VAN THEMAAT, P., *Introduction to the Law of the European Communities*, Deventer, Boston, (Kluwer Law and Taxation Publishers), 1989, pp. 769-827.

³¹ See Annex V for the complete text of these articles.

Thirdly, the participation of the **European Parliament** is very limited. In particular, the Parliament is accorded no legal role either before or during the negotiation stage, which severely restricts its ability to have any influence on the direction of negotiations and the content of the final agreement. To the extent that participation by the Parliament is envisaged, the form of that participation depends on the legal basis used for the agreement. It is important to note that after the revision of the Rome Treaty by Maastricht a distinction has to be made between the so-called material legal base and the procedural base. The former defines the competence of the Union to act. The latter instructs how this should be done, in particular as regards the conclusion of international negotiations.

1. There is no role at all for the European Parliament if Article 113 EEC is used as the sole legal (procedural) base. However, the Council has engaged in the Solemn Declaration on European Union (Stuttgart, 19 June 1983) to consult the Parliament on the conclusion of any international agreement of a significant importance.
2. The Parliament is usually consulted on the outcome of the negotiations if the legal base of the agreement is Article 228 EEC. This system of consultation can be considered insufficient for three main reasons:
 - As usual when the consultation procedure applies, there is no legal obligation on the part of the Commission or the Council to take any action on the basis of the opinion given by the Parliament.
 - Consultation of the Parliament takes place after the completion of the negotiations by the Commission and after signature by the Council but before it officially concludes the agreement. The timing of Parliament's intervention makes it almost impossible for the Commission or the Council to change the content of the agreement in the light of the Parliament's opinion. To do so would undermine the commitments made by the EC to other parties in the original negotiations.
 - The Council is prone to keep the necessary documents to itself until the last moment, and then send them to the European Parliament with a demand for an "urgent" opinion. This time pressure often prevents the European Parliament from giving full consideration to the content of the proposed agreement.³²
3. Finally, by way of derogation from the general rule of consultation under Article 228 EEC, the full assent of the European Parliament is required for the following kinds of agreement: those that are association-type agreements as defined in Article 238 EEC; those that establish "a specific institutional framework by organising cooperation procedures; those that have "important budgetary implications" for the EC; and those that require the actual amendment of an act previously adopted under the co-decision procedure.

It should be borne in mind that the rules examined here are those that apply for international agreements in areas of exclusive Community competence. An international agreement entered into by the EC which extends beyond areas of exclusive Community competence is a mixed agreement. Mixed agreements must be ratified at a national level by all the member states, as well as being concluded by the Council at Community level in the usual way.

³² See for example EUROPEAN PARLIAMENT, *Resolution of 15 December 1994 on the conclusion of the Uruguay Round and the future activities of the WTO*, Minutes of the Sitting, Part II, Item 7: "[The European Parliament] expresses its dissatisfaction at the fact that the proposed legislative changes for implementing the Uruguay Round results were not forwarded to it until the end of October, making proper debate by the Parliament before the end of the year virtually impossible." On numerous other occasions the European Parliament has protested against Council practice designed to reduce the possibility of meaningful participation by the Parliament.

Furthermore, in the case of mixed agreements, the delegations of individual member states have the right to participate directly in negotiations. For reasons of coherence and unity, the Commission still usually acts as the sole spokesman and negotiator for the Community and its member states. However, the Commission is closely supervised by a committee composed of representatives of the member states ('the Article 113' Committee).

b) The Luns and Westerterp Procedures

The Luns and Westerterp procedures are the means by which the European Parliament is kept informed of developments during the different stages of the negotiations. They were introduced - in 1964 and 1973 respectively - in order to ensure that the Parliament was not in fact completely excluded from the negotiation and conclusion of international agreements. They do not, however, provide a legal guarantee that the Parliament will always be kept informed since they are not legally binding agreements between the Council and the Parliament. Rather they are self-engaging, unilateral and conditional declarations on behalf of the Council.

Since the Solemn Declaration on European Union, agreed by the European Council in Stuttgart in 1983, these procedures have applied for "all significant international agreements" entered into by the Community.³³

The **Luns Procedure** applies to the negotiation of association agreements as defined by Article 238 EEC of the Treaty.³⁴ This procedure only foresees informing the Parliament. It is not consulted. The means by which the Parliament is kept informed of developments is basically the same as for the Westerterp Procedure (see below). In the case of agreements to be concluded under Article 238 EEC, however, the Council may not conclude the agreement without the assent of the European Parliament.

The **Westerterp Procedure**, which in fact constitutes an extension of the Luns procedure to agreements other than association agreements, applies to negotiations undertaken under Article 113 (Common Commercial Policy) and Article 235 (achievement of Community objectives relating the Common Market).³⁵ According to this procedure, the European Parliament is involved at three separate stages:

1. The Council informs the Parliament officially and confidentially of the negotiation directive. At this stage the Parliament is usually expected to give some kind of opinion, even if a full debate and resolution is not practical.
2. Throughout the course of the negotiations, the Commission keeps the relevant Parliamentary Committee informed of developments.

³³ Solemn Declaration on European Union of 19 June 1983, point 2.3.7. (Bull. EC 6-1983, p.24.) See Annex VI for full text.

³⁴ Protocol to the Council Minutes of 24-25 February 1964. See Annex VII for full text.

³⁵ Declaration of the Council of 16 October 1973. See Annex VII for full text.

3. The Council then informs the Parliament of the final content of the agreement after the end of the negotiations, but before the agreement has been signed by the Council.³⁶ At that moment the Parliament can ask for a special meeting with the President of the Council to obtain more information on the agreement. This step is in fact an invitation for the Council to reconsider the agreement. In the relevant case, it represents a political signal that Parliament might refuse its assent.

In practice, the two procedures mean that Commission officials regularly attend meetings of the Committee on External Economic Relations and the Committee on Foreign Affairs, Security and Defence Policy to inform MEPs and to answer their questions on matters relating to negotiations in progress. Over the past few years, the Commissioner responsible for external economic relations, Sir Leon Brittan, has also made a conscious effort to appear before the Committee in person in order to answer questions and present the Commission's case on particularly important subjects.

ii) The operation of the EC in the Uruguay Round

a) Negotiations

For the most part, the EC obtained what it wanted from the Uruguay Round. This owed much to the fact that the Commission and the member states were generally able to present a unified front, with the Commission remaining the sole spokesman and negotiator for the Community. However unity was only preserved after lengthy discussions in Council which significantly delayed the negotiations on the multilateral level. Any perceived disunity serves to weaken the EC position and can be exploited by other parties in order to extract greater concessions.³⁷

The general success of the EC, and the relative unity that usually prevailed between the member states and the Commission, would suggest that the procedures governing relations between the EC institutions during trade negotiations worked well. To a large extent this is true. The Commission negotiated on the basis of Council instructions, which in this case were often quite vague. The Article 113 Committee kept a very close watch on developments, and was engaged in almost constant consultation with the Commission negotiating team in Geneva. It was not so much the procedures themselves that ensured unity and success, however, but the pragmatic and flexible approach to their application that was adopted by the Commission and the member states. They focused on the content of the negotiations, and did not - indeed could not afford to - get sidetracked into internal arguments over the precise distribution of competences.

³⁶ It should be noted that point 3 of this procedure has been overtaken by other developments and is no longer very relevant. Firstly, in its Solemn Declaration on European Union (see note 30 above), the Council gave a commitment to consult the European Parliament before the conclusion of all "significant international agreements" by the Community, and before the accession of new member states. More importantly, the Treaty on European Union amended Article 228, so that consultation of the European Parliament is now the general rule before an agreement is concluded.

³⁷ The most serious disagreement between a member state and the Commission was that involving France on the issue of liberalising agricultural trade. The Commission reached a bilateral preliminary agreement with the US in November 1992, the so-called Blair House agreement. France insisted that the Commission had overstepped its mandate, and that Blair House undermined the CAP and was unacceptable to French agricultural interests. As a result further negotiations on agriculture had to be held during 1993.

b) Dispute between the Council and the Commission over ratification

The relatively pragmatic approach to Commission-Council relations that won through during the negotiations soon disappeared once the negotiations were complete and the agreements had to be concluded. The dispute that arose related to the legal base that was to be used for the conclusion of the results of the Uruguay Round. The choice of legal base became a matter of concern to each institution because it would greatly influence, if not determine, the way in which the EC was represented in the WTO and in particular the distribution of competences between the EC and its member states.

With regard to tariff levels and trade in goods there was no controversy. These are areas that the GATT has been dealing with ever since it came into being, and the jurisprudence of the Court of Justice of the European Communities (ECJ) is quite clear that traditional trade policy is an exclusive EC competence under Article 113 EEC.³⁸ There was no clear precedent, however, to indicate the distribution of competences between the EC and its member states with regard to those non-traditional areas which were included in multilateral trade negotiations for the first time as part of the Uruguay Round: services, intellectual property and investment. If all the trade agreements of the Uruguay Round were concluded by the EC under Article 113 EEC alone, the implication would be that these non-traditional areas would subsequently be dealt with under Article 113 EEC in the WTO. This would mean giving a very powerful role to the Commission since all further negotiations undertaken in these areas in the WTO would be an exclusive EC competence. Using a variety of articles as the legal base for the conclusion of the Uruguay Round, on the other hand, would mean that the competence for non-traditional areas of trade policy within the WTO was governed by the same rules that apply for the adoption of internal legislation in these policy areas i.e. there would be some cases of shared competence between the EC and its member states. This would give considerably more power to individual member states.

As often in disputes of this nature, the Commission adopted a "finalist" argument. According to this view it is the overall aim of the action undertaken which should determine the legal base which is used. In this case the Commission argued that even if some areas of the Uruguay Round agreements did fall outside a strict definition of trade policy, the overall aim of these agreements was to manage international trade. In its original proposal concerning the conclusion of the Uruguay Round, the Commission therefore stated that Article 113 EEC, along with Article 228(3) EEC, could be used as the sole legal base:

"In the Commission's view the Community has the requisite overall competence to undertake the international commitments enshrined in the instruments the Council is being asked to adopt.

Its competence derives from Article 113 EEC of the EC treaty, in conjunction with Article 95 of the ECSC Treaty where ECSC products are concerned.

While some of the instruments do have implications for other areas as well, their purpose and content is to regulate various aspects of international trade and this is indubitably an area for which the Community has sole competence by virtue of the commercial policy".³⁹

³⁸ Opinion 1/75, 11 November 1975.

³⁹ COMMISSION OF THE EUROPEAN COMMUNITIES, Proposal for a Council Decision concerning the conclusion of the results of the Uruguay Round of Multilateral Trade Negotiations (1986-94), COM(94) 143 final, page 3a.

In advocating the sole use of Article 113 EEC, in conjunction with Article 228(3) EEC, the Commission was seeking to preserve its own pivotal role in trade negotiations. It believed that the Community position in international negotiations could be seriously weakened if the Commission's right to act as sole negotiator was undermined. It was fearful that a fragmentation of responsibility for EC trade policy would make it increasingly difficult for the Community as a whole to keep a common line in future negotiations.

In contrast to the Commission, the Council has traditionally adopted an "instrumentalist" approach to disputes such as this. By this it is meant that the Council prefers to determine the legal base in view of what action is being taken, and not in terms of the general aim of that action. In this case therefore, the Council wanted to base the conclusion of the results of the Uruguay Round not just on Articles 113 EEC and 228(3) EEC, but also on the specific articles of the Treaty of Rome relating to services, intellectual property, investment, and agriculture. In this way the member states would be better able to preserve their influence and independence within the WTO whenever such non-traditional aspects of trade policy were being discussed or were the subject of further negotiations. The member states were also keen to preserve their influence because issues of social and environmental policy are creeping on to the WTO agenda.

In accordance with the Council view, the General Affairs Council of 4 October 1994 reached a political agreement to conclude the Uruguay Round on the basis of a variety of treaty articles. The Commission proposal was therefore modified so that as well as Articles 113 EEC and 228(3) EEC, the following articles were also used as legal bases: 43 (agriculture); 54, 57, 66, 75, and 84(2) (services); 99, 100 and 100a (intellectual property rights); and 235 (investment). The Commission, however, felt the need for a clarification of the law applicable in this case, and had already, on 4 August 1994, filed a request for the opinion of the ECJ, as it is entitled to do under Article 228(6) EEC.

c) Opinion of 15 November 1994 of the Court of Justice of the European Communities⁴⁰

In reply to the Commission's request, the Court of Justice presented its opinion on 15 November 1994. There are three fundamental points to the opinion:

1. The EC alone is competent, under Article 113 EEC, to conclude multilateral agreements relating to trade in goods (including all ECSC products) as well as in all services (excluding those related to the movement of persons).
2. The competence to conclude GATS (including those related to the movement of persons) is shared between the EC and its member states.
3. The competence to conclude the Agreement on TRIPs and TRIMs is shared between the EC and its member states.

To a large extent, the opinion of the ECJ was in line with the arguments of the Council and the member states. In particular it sanctioned the use of various different legal bases for the conclusion of the Uruguay Round and recognised that the non-traditional aspects of trade policy dealt with in the WTO are not the exclusive competence of the Community. By acknowledging the coexistence of exclusive Community competences and competences shared between the Community and its member states, the ECJ was effectively giving the results of the Uruguay Round the status of a mixed agreement. Some observers fear that this

⁴⁰ Opinion 1/94, 15 November 1994.

could threaten the integrated nature of EC trade policy and that it could even represent a step towards the "renationalisation" of trade policy.

The Court of Justice recognised the fact that the notion of a mixed agreement in this case could lead to complications for EC conduct within the WTO, and it therefore specifically reminded the institutions of their obligation to cooperate with each other in order to ensure **unity of representation** whenever external agreements touched on matters of mixed competence. In practice, this means that a practical code of conduct governing the operation of the EC in the WTO might need to be worked out.⁴¹

d) Involvement of the European Parliament

There are three important points with regard to the involvement of the European Parliament: how the Parliament was kept informed of developments in the negotiations; the presence of Parliamentary Delegations at the Ministerial Conferences; and ratification of the final results.

1. Keeping the European Parliament informed.

Throughout the Uruguay Round, the European Parliament was kept informed by the Commission of developments in the negotiations. Commission officials regularly answered questions posed by the Committee on External Economic Relations. On several occasions in the Plenary, Commission and council also had to answer on oral questions followed by a debate and a vote on a resolution in which the Parliament defined its position with regard to the state of play of negotiations. Questions and debate have now grown up as standard practice around the Luns and Westerterp procedures.

2. European Parliament Delegations at Ministerial Conferences.

One important new practice that emerged during the Uruguay Round was for the European Parliament to be officially represented by a delegation at the ministerial meetings of the GATT. This practice began at the Mid-Term Review held in Montreal in 1988, and was repeated for the Brussels final conference (1990) and again for the Marakesh final conference (1994).

3. Ratification

Ratification of the Uruguay Round was a significant event in the history of the European Parliament since it is the first time that it has been called upon to give its assent to the results of a GATT round. The assent of the European Parliament was required under the terms of Article 228.(3.2) EEC.⁴² The Parliament itself had insisted on the application of this Article on three grounds.⁴³ Firstly, it was felt that the establishment of the WTO did indeed establish "a specific institutional framework by organising cooperation procedures." Secondly, the Parliament argued that the tariff reductions resulting from the trade liberalisation measures included in the Uruguay Round package would have a significant effect on the EC budget. Thirdly EC legislation implementing the results of the Uruguay Round (e.g. labelling requirements for alcoholic beverages as part of the Intellectual Property Agreement) had to be (partly) adopted according to the codecision procedure. In spite of their disagreement on other legal matters, neither the Commission nor the Council had seriously disputed that the conclusion of the results of the Uruguay Round fulfilled the criteria

⁴¹ See section iii) of this Chapter.

⁴² See Annex V for the full text of Article 228 EEC.

⁴³ EUROPEAN PARLIAMENT, *Resolution of 19 January 1994 on GATT*, OJ C 44, 14.2.94, p.102.

set down in Article 228(3) EEC. The use of the assent procedure in the European Parliament was therefore not dependent on the opinion of the ECJ relating to the correct material legal base for the ratification of the agreements in the fields of services, intellectual property, and investment.

The European Parliament approved the results of the Uruguay Round on 14 December 1994 by a clear majority: 327 votes to 65, with 13 abstentions.⁴⁴ That left the way open for the Council officially to conclude all the agreements of the Uruguay Round on 22 December, in time for the legal establishment of the WTO on the first day of 1995.

iii) The operation of the EC in the WTO

a) The EC as a member of the WTO alongside its Member States

The EC itself is not an official contracting party of the GATT. Although it did have the task of representing all its Member States within the GATT, only the Member States themselves are actually contracting parties. The EC is, however, a member of the WTO in its own right, alongside its member states. This development gives formal international recognition to the role of the EC as laid down in the Treaty of Rome.

b) The need for a code of conduct

A code of conduct to govern the practical operation of the EC in the WTO was originally proposed by the Council as a way of persuading the Commission to drop its request for an opinion from the ECJ. Since the Commission did not drop its request, and the ECJ opinion was subsequently produced, the preliminary discussions that had begun between the Council and the Commission soon came to an end. During the French Presidency it was considered to revive these discussions at some later date, although no concrete results should be expected for some time yet. The only real negotiations currently taking place relate to services, and the Council and the Commission can continue to operate on the basis of the pragmatic understanding in this area built up during the Uruguay Round.

But looking beyond the short-term there is probably still a need for a code of conduct. If anything, the ECJ opinion, acknowledging the existence of shared competences between the EC and its member states in certain areas falling within the jurisdiction of the WTO, in fact makes a code more necessary than it appeared before. Most importantly, there would always be the risk of an individual member state presenting a position that was different from the Community position as defended by the Commission. This problem is especially serious since the Treaty on European Union suppressed Article 116 EEC, which called for member states to proceed only by common action in international organisations of an economic character.⁴⁵ Article 116 EEC was little used, but it was most relevant to mixed agreements.

An illustration of the reality of the problem can be found in the case of cross-retaliation. Let the case be that only one or two member states are threatened by a trading partner, but not the Community as a whole? Should it be for an individual member to pursue its position? Or should the Commission in such a case be the single voice of the Community? The case of Airbus in which France, Germany and Spain are the only member states directly involved obviously brings such questions to the fore.

⁴⁴ EUROPEAN PARLIAMENT, Minutes of the Sitting of 14 December 1994.

⁴⁵ See Annex V for the complete text of the old Article 116 EEC.

One answer would be to find a legal solution on an ad hoc basis each time a problem arose, but this would risk paralysing EC activity within the WTO and having Council-Commission relations marred by constant disputes over competences: It would be very hard to defend EC interests effectively in such circumstances. A code of conduct, in the form of a clear set of rules indicating as far as possible the exact role of each institution in the WTO, would be a better solution.

c) The scope of a code of conduct

If a code of conduct is finally drawn up, it will probably be confined to laying down the ground rules for the division of responsibilities and competences between the Commission and the member states in the WTO. The European Parliament will almost certainly not be involved in any internal negotiations that might lead to a code, nor is it likely that the provisions of such a code would cover the participation of the Parliament.⁴⁶ This is in spite of the European Parliament having made clear its belief that the future conduct of the EC in the WTO should be decided by an interinstitutional agreement involving all three main institutions, and should not just be the object of bilateral discussions between the Council and the Commission.⁴⁷

d) The content of a code of conduct

In order to have a clearer idea of the potential content of such a code, it is necessary to identify some of the practical problems that might arise for the EC in the course of its participation in the WTO when areas of shared competence are involved. Three potential problem areas have been highlighted below: the right to take the floor, the right to vote and dispute settlement.

1. The right to take the floor.

A code would have to specify the circumstances in which an individual member state would be allowed to take the floor during negotiations or discussions relating to areas of shared competence. Similarly, there would probably need to be some provision stating when and whether an individual member state would have to keep within an agreed Community position if it did take the floor.

2. The right to vote.

Article IX of The Agreement Establishing The World Trade Organisation states that the EC shall have a number of votes equal to the number of its member states.⁴⁸ This might clarify voting procedure from the perspective of the WTO, but it still could lead to internal disagreements within the EC in areas of shared competence. EC practice in the case of shared competence is to give a vote to all members states of the EC plus to the Community

⁴⁶ Addressing the European Parliament in Strasbourg on 14 December 1994, Sir Leon Brittan, the Commissioner responsible for EU relations with the WTO, gave no assurances beyond saying that "we shall keep the European Parliament informed as that [the code of conduct] develops." Verbatim report of proceedings of the European Parliament, 13.12.1994 - 14.12.1994., p.92.

⁴⁷ EUROPEAN PARLIAMENT, *Resolution of 15 December 1994 on the conclusion of the Uruguay Round and the future activities of the WTO*, Minutes of the Sitting, Part II, Item 7: "[The European Parliament] believes, as a consequence of the opinion of the ECJ of 15 November 1994, that it is essential for the Commission, the Council and the Parliament to enter into negotiations forthwith on the conclusion of an interinstitutional agreement defining more accurately the role of the EU towards the WTO."

⁴⁸ See Annex III for full text of The Agreement establishing The World Trade Organisation.

itself (i.e. sixteen in total), but the Agreement, in a footnote to Article IX, specifically rules out the possibility of the EC ever having more votes than the total number of its member states.⁴⁹ A code of conduct would have to find a solution to this problem.

3. Dispute settlement.

The division of rights and responsibilities between the EC and its member states with regard to the settlement of disputes would also require clarification. For example, would the Community or an individual member state initiate dispute settlement proceedings in a dispute relating to services, an area of shared competence? In addition, it is possible that when another WTO member initiates proceedings against the EC for a breach of rules in an area of exclusive Community competence, the actual retaliation affects an area of member state competence. Such a member state competence automatically gives a go-ahead for an individual member state to act before any attempt can be made to achieve a common Community stand point.

Some of these problems, although not those relating to dispute settlement, had been addressed by the Commission in its initial proposal to the Council on the conclusion of the results of the Uruguay Round. In this proposal, which was produced before the opinion of the ECJ was known, the Commission had put forward its belief that the EC could operate in the WTO in very much the same way as it had in the GATT. The Commission considered that:

"Community and Member State participation in the WTO and subordinate bodies should follow existing practice within GATT, and in particular:

- *that the Member States should take part in the proceedings of the WTO bodies in accordance with arrangements allowing them to be identified within the Community delegation;*
- *that the position taken by the Community in WTO bodies should be worked out in the usual way at preliminary coordination meetings; should insurmountable differences of opinion emerge in the course of the coordination meetings, Community spokesmen would reserve their position within the bodies concerned pending the working out of a solution in the Article 113 Committee, the Permanent Representatives Committee or if necessary the Council;*
- *that the Community position should be expressed within the WTO by the Commission; Member States directly and specifically affected by the issue under consideration could be given permission by the Community to take the floor in appropriate cases, keeping within the previously agreed common position to support and expand upon it.*

*If a vote is to be taken the Commission will cast a block vote on behalf of the twelve [now fifteen] Community voting members for the option which corresponds to the Community position".*⁵⁰

These suggestions were in keeping with the Commission argument, presented in the same proposal, that Article 113 EEC, along with Article 228(3) EEC, was a sufficient legal base for

⁴⁹ SCHMITTER, Catherine, "La Communauté européenne et l'Uruguay Round: incertitudes et faiblesses", *Europe*, Juin 1994, chronique 5.

⁵⁰ COMMISSION OF THE EUROPEAN COMMUNITIES, Proposal for a Council Decision concerning the conclusion of the results of the Uruguay Round of Multilateral Trade Negotiations (1986-94), COM(94) 143 final, page 4a.

concluding the Uruguay Round. But this logically meant that such suggestions could not realistically be defended once the ECJ had stated that Articles 113 EEC and 228(3) EEC were not in fact a sufficient legal base on their own and had acknowledged the existence of shared competences in some areas of trade policy dealt with by the WTO.

The Commission position had not in any case won unanimous support from the member states, and the ECJ opinion served to reinforce their arguments. The view in the Council, particularly among the larger member states, is that while EC practice with regard to traditional trade policy (i.e. trade in goods) can continue much as before, a new *modus operandi* will have to be worked out for the non-traditional areas of trade policy which also fall under WTO jurisdiction. In these areas, where competence is shared between the Community and the member states, most member states consider it inappropriate for the EC to continue to operate on the basis of practice that was established for a policy area of exclusive Community competence.

The French National Assembly has outlined in a report the possible content of a code applicable to areas of shared competence.⁵¹ While the following ideas are not necessarily the official line of the French Government, still less that of the Council as a whole, they do provide a useful indication of the direction in which some member states expect things to move with regard to areas of shared competence:

1. Right to take the floor.

If the member states have managed to reach a common position, the spokesperson for the EC should be either the Commission or the Council Presidency, depending on whether the subject in question is mainly Community or mainly national competence. If the member states fail to agree on a common position, then the Council Presidency should put forward and defend the majority position, while member states not supporting the majority position could present their own positions.

2. The right to vote.

The member states should vote *en bloc* so long as a common position exists. However, if no common position exists, then individual member states should not be prevented from voting differently, although this should be avoided as far as possible.

3. Dispute settlement.

As with the right to vote, the use of the dispute settlement mechanism by an individual member state if no common position exists should not be ruled out, although it should be kept to a minimum.

The European Parliament has clearly expressed its opposition to the development of a code along the lines of that outlined by the French National Assembly. The Parliament is above all concerned that the *acquis* of the common commercial policy should be upheld in spite of the potential implications of the ECJ Opinion of 15 November 1994. Given the need for unity within the EC on all matters dealt with in the WTO, the Parliament has called on the member states to accept the Commission as sole representative of the Community in the WTO - even for areas that are not the exclusive competence of the Community.⁵²

⁵¹ ASSEMBLEE NATIONALE FRANCAISE, *Cycle d'Uruguay: conclusion et mise en oeuvres communautaire*, Rapport d'information No.1713, 22 novembre 1994. Rapporteur: HOGUET, Patrick.

⁵² EUROPEAN PARLIAMENT, *Resolution of 15 December 1994 on the conclusion of the Uruguay Round and the future activities of the WTO*, Minutes of the Sitting, Part II, Item 7.

e) Beyond a code of conduct

In the end the establishment of a code of conduct will always remain a second-best option for an efficient operation of the EC in the WTO.⁵³ The code will only represent a weak legal instrument which will be difficult to enforce. The danger of a 'renationalisation' of European trade policy will still be very real. Such a development would run counter to the economic logic of a rapidly developing and integrating world economy. The coming about of a global economy implies the necessity for the EC to act as a single entity on the international forum. In order to do so the EC should be able to rely on solid legal grounds which would strengthen its position and provide real leverage power with regard to its trading partners. Reconsideration and revision of the repealed Article 116 EEC which called for member states to proceed only by common action in international organisations of an economic character, and the still existing but rather vague Article 229 EEC which lays on the Commission the responsibility of ensuring the maintenance of appropriate relations with international organisations including a.o the GATT, would offer the possibility for putting in place the legal base on which the EC could efficiently operate to safeguard the trade interests of the Community as a whole.⁵⁴ Both articles could be put on the agenda of the IGC of 1996 for revision in the context of the ECJ Opinion.

⁵³ On 19 July 1995 Mr. Paemen, Deputy Director General for External Economic Relations and Commercial policy of the Commission stated before the Committee on External Economic relations of the European Parliament that the IGC of 1996 should make the code of conduct superfluous.

⁵⁴ See Annex V for the full text of Articles 116 and 229.

IV. THE EUROPEAN PARLIAMENT AND THE WTO

i) The need for democratic control

The creation of the WTO is symptomatic of the growing tendency towards global rule-making. The need for global rule-making stems from the increasing integration and interdependence of the world economy, which has begun to turn the concept of a "global market place" into reality. For the global market place to function effectively, it will need to be accompanied by the development of global rules. But these rules can no longer be confined to traditional areas of trade policy, such as tariffs and the most obvious non-tariff barriers. The Uruguay Round included agreements relating to services, investment and intellectual property, and therefore these policy areas are already dealt with at a global level, in so far as they fall within the scope of the WTO. The WTO agenda is also filling up with formal and informal discussions about the prospect of global rules relating to the commercial aspects of environmental, competition and social policy.⁵⁵

The European Parliament has made clear that it wants to play a full part in the development of EC activities in the WTO, in order to ensure democratic control over the policy of the Community.⁵⁶ In the light of what has been said above, democratic control by the European Parliament would seem to be necessary for two reasons:

Firstly, global rule-making on any matter in the framework of a functional international organisation such as the WTO can lead to a situation in which national parliaments no longer have adequate control over the actions of their national governments. The WTO as an institution has obtained decision making power including amending the Agreement.⁵⁷ The decisions it takes are binding on its members. In other words, it can lead to a democratic deficit. This problem is very similar to the one faced by national parliaments in trying to keep a semblance of democratic control over their own governments' actions in the Council of Ministers of the EC. In the case of the WTO, the democratic deficit could be closed by ensuring that the European Parliament exercised full control over the activities of the Commission.

Secondly, membership of the WTO has implications for sovereignty. This is because the sphere of influence of the WTO is not restricted to border measures, but has begun to encroach on certain domestic policies of member countries. Furthermore, the new consensus rule used in the Dispute Settlement Procedure, whereby an individual member can no longer block the establishment of a panel or the adoption of a panel report, implies some transfer of sovereignty. This was done by voluntary engagement and in accordance with the long term interests of the member countries.⁵⁸ However, this can to some extent be offset by giving national parliaments and the European Parliament greater responsibility for control and supervision.

⁵⁵ See Chapter V.

⁵⁶ EUROPEAN PARLIAMENT, *Resolution of 24 March 1994 on the outcome of the Uruguay Round of GATT multilateral trade negotiations*, OJ C 114, 25.4.1994, p.25.

⁵⁷ Articles IX and X of the Agreement; see above Chapter II v).

⁵⁸ The introduction of the rule of law in relations between sovereign states necessarily implies a reduction of the discretionary power of an individual member state. There is a certain parallelism here with what the member states of the European Community did in establishing the internal market. In fact, the problems which both member countries of the WTO and of the Community are facing, are much of the same nature and arise from the integration process of the global economy.

The role of the European Parliament in ensuring democratic control is especially important in areas of exclusive EC competence. It is also vital, however, that the European Parliament plays an active part in ensuring democratic control in all areas dealt with by the WTO. This is because national parliaments do not have the necessary interest in giving a balanced assessment of the results of negotiations from the perspective of the EC as a whole.

ii) The exercise of democratic control by the European Parliament

The European Parliament is not seeking to participate directly in the functioning of the WTO in any official capacity. Direct participation in trade negotiations, and in all the business of a functional international organisation such as the WTO, is recognised as being the right and duty of national governments and, in the case of the EC, the European Commission. The very nature of international trade negotiations - their complexity, as well as the need for secrecy, flexibility and fast reactions - is not in any case conducive to the effective participation of a large democratic body such as the European Parliament.

Nevertheless, for the reasons outlined above, the European Parliament is concerned to consolidate and further develop its role in the control and monitoring of the line taken by the Commission in negotiations and of the results that it obtains. The Parliament would also like to have a role in the pre-negotiation phase of the process, when the negotiating mandate of the Commission is being agreed upon. At the present time, the Parliament is almost entirely excluded from this phase.

a) Legal perspective

From a legal point of view, the participation of the European Parliament in multilateral trade negotiations has not changed simply because these negotiations are now taking place within the framework of the WTO as opposed to the GATT. So the following basic rules and procedures still apply: no role for the Parliament in drawing up negotiations mandates; information given to the Parliament during the course of negotiations; and, generally speaking, consultation of the Parliament before the agreement is concluded.⁵⁹ Although the assent of the European Parliament was sought before the conclusion of the results of the Uruguay Round, there is no guarantee that the assent procedure will apply for any or all agreements reached within the WTO, in spite of calls for such a guarantee from the Parliament itself.⁶⁰ However, the European Parliament is seeking ways and means to be systematically involved in the work of the Organisation.⁶¹

The results of the Uruguay Round were subject to the assent procedure in accordance with Article 228(3) EEC for two reasons: a) the implied tariff cuts had important budgetary implications for the EC; and b) a specific institutional framework (i.e. the WTO itself) was established. Since the WTO is now established, the results of further multilateral trade negotiations will not, for the foreseeable future, include the creation of any further new institutional frameworks. The assent of the European Parliament will therefore only be sought in the future if agreements reached within WTO are deemed, by the scale of tariff cuts that they imply, to have an important impact on the EC budget.

⁵⁹ See Chapter III, i), a).

⁶⁰ EUROPEAN PARLIAMENT, *Resolution of 15 December 1994 on the conclusion of the Uruguay Round and the future activities of the WTO*, Minutes of the Sitting, Part II, Item 7 and 16.

⁶¹ The Committee on External Economic relations of the European Parliament has initiated a report on the institutional aspects of WTO.

It is true that as well as Article 228(3) EEC, a wide variety of other Treaty articles were also used for the conclusion of the results of the Uruguay Round, in accordance with the wishes of the Council and the opinion of the ECJ.⁶² Logically, the same articles will also be used as the legal basis for concluding any further agreements reached in the WTO relating to services, intellectual property, investment or agriculture. One might imagine that this would effect the participation of the European Parliament with regard to the conclusion of agreements in these new areas, since some of these articles require the use of the co-operation procedure or the co-decision procedure for internal legislation.⁶³ In fact, however, the use of these articles as a legal basis for concluding agreements will not alter the means by which the European Parliament participates. This is because Article 228(3) EEC provides specifically that the consultation procedure shall apply even in cases where the agreement covers a field for which the procedure referred to in Article 189b EEC or that referred to in Article 189c EEC is required for the adoption of internal rules.⁶⁴

b) Possible legal changes

If the legal role of the Parliament is to be strengthened and clarified in the wake of the establishment of the WTO, this could happen in two ways: there could be a legally binding interinstitutional agreement, involving the Parliament, on the operation of the EC in the WTO; and/or the 1996 Intergovernmental Conference (IGC) might result in changes to the Treaty provisions governing the role of the Parliament in international agreements.

Willy De Clercq, Chairman of the Parliament's Committee on External Economic Relations, has called for an interinstitutional agreement.⁶⁵ If such an agreement were to be negotiated, it would almost certainly be confined to strengthening the existing procedures for keeping Parliament informed of developments in negotiations. It is very unlikely that it would address issues such as extending the use of the assent procedure or giving the Parliament a role in drawing up negotiation mandates. In truth, however, an interinstitutional agreement involving the Parliament will probably not be negotiated at all. In so far as there is any kind of an agreement between the institutions of the EC, it is likely to come in the form of a code of conduct agreed on a bilateral basis between the Council and the Commission.⁶⁶

Any substantive changes to the role of the European Parliament will therefore have to wait until the 1996 IGC. If any relevant changes are made at that time, they will probably refer to the conduct of EC trade policy as a whole rather than just to the operation of the EC in the WTO. They would nevertheless be highly relevant to how the EC operates in the WTO since that is a fundamental part of EC trade policy.

It is still far from clear precisely what legal changes might emerge from the 1996 IGC. The Committee on External Economic relations has already discussed several ideas with regard

⁶² See Chapter III, ii), b).

⁶³ The codecision procedure applies, with certain exceptions, to Articles 54, 57, and 100a of the EC Treaty. The cooperation procedure applies, again with certain exceptions, to Article 75EEC.

⁶⁴ Article 189b EEC describes the codecision procedure and Article 189c EEC describes the cooperation procedure. See Annex V for the full text of Article 228 EEC.

⁶⁵ Agence Europe, 18 November 1994, p.10.

⁶⁶ See Chapter III, iii).

to what changes the European Parliament might demand.⁶⁷ The five most important proposals were:⁶⁸

1. To revise Article 113 EEC in order to include some provision for participation by the European Parliament. The Parliament is currently excluded entirely from the negotiation and conclusion of any agreement based solely on Article 113 EEC. This means that effective democratic control cannot not be guaranteed.
2. To change Article 228 EEC to specify that, where the European Parliament has the power of assent, it must also, with the Council, participate in the drawing up of negotiation directives and in the Article 113 Committee which oversees the line taken by the Commission during negotiations. Including Parliament in the pre-negotiation phase would go a long way towards providing for greater openness and democratic control. It would remedy one of the main problems of parliamentary participation, namely that the Parliament is only ever called upon to give its assent, if at all, once the negotiations have already been completed. It would also help to avoid the problem of MEPs being given insufficient time to consider the results of negotiations before giving their opinion. Sir Leon Brittan has pointed out that if resolutions of the Parliament drawn up before the negotiations were binding, this would bolster the negotiating power of the Commission, in the same way that Micky Kantor, the US Trade Representative, uses the opinion of Congress to his advantage.⁶⁹
3. To include some concrete provision on the participation of the European Parliament in international organisations.
4. To reinstate the old Article 116 EEC which called for common action of the EC in international organisations. The potential implications of the ECJ Opinion make it desirable to have an article that, as far as possible, prevents the institutions and member states of the EC from acting unilaterally within the WTO.
5. To revise Article 228 EEC which stipulates the most important procedural legal base involving the European parliament in international negotiations and ratification, in order to extent the Assent procedure to virtually all international agreements.

c) Practical perspective

Even though any fundamental legal changes will have to wait until the IGC, there are certain practical issues that merit immediate attention. Addressing the European Parliament on 14 December 1994, Sir Leon Brittan outlined a practical three point plan for the involvement of the European Parliament in the business of the WTO:⁷⁰

⁶⁷ These ideas were floated by its Chairman, Mr. Willy De Clercq, in addressing the Committee on External Economic Relations, Brussels, 20 December 1994.

⁶⁸ See the Opinion of the Committee for the Committee on Institutional Affairs of March 1995.

⁶⁹ Verbatim report of the proceedings of the European Parliament, 13.12.1994 - 14.12.1994, p.93.

⁷⁰ Verbatim report of the proceedings of the European Parliament, 13.12.1994 - 14.12.1994, p.93.

1. European Parliament delegations would have the right to attend WTO Ministerial Conferences, as they did during the later stages of the Uruguay Round. The European Parliament had demanded that this practice should continue in the WTO in its latest resolution on the conclusion of the Uruguay Round and the future activities of the WTO.⁷¹
2. Commission officials will answer written and oral questions from the relevant Committees of the European Parliament whenever necessary.
3. Sir Leon Brittan will debate with the Committee on External Economic Relations whenever that Committee so wishes.

It should be noted that although the proposals of the Commissioner were welcomed by MEPs, they are in fact no more than a pledge to continue with the same practice and procedures that were in operation before the establishment of the WTO. As has been said above, any really substantive legal changes will have to wait until the 1996 IGC.

In the meantime, the European Parliament should continue to be pro-active in drawing up opinions and resolutions on negotiations being prepared or currently being undertaken, even though they will not - at least with the current provisions of the Treaty - be binding on the Council or the Commission. During his hearing in front of MEPs as part of the confirmation of the new Commission, Sir Leon Brittan went out of his way to state that *at the moment of policy formulation within the EU, the Parliament's voice must be heard*.⁷² This is true for all issues on the WTO policy agenda, but perhaps especially for the areas of environmental policy, social rights and competition policy. In these cases, the Parliament will have to ensure that there is sufficient dialogue and coordination between the Committee on External Economic Relations and the other relevant Committees of the European Parliament.

⁷¹ EUROPEAN PARLIAMENT, *Resolution of 15 December 1994 on the conclusion of the Uruguay Round and the future activities of the WTO*, Minutes of the Sitting, Part II, Item 7.

⁷² Hearing of Sir Leon Brittan, Brussels, 20 January 1995.

V. ISSUES ON THE WTO AGENDA

The agenda of the newly created WTO is crowded. Firstly, there are three areas, not specifically related to trade, in which there is growing pressure for action to be taken within the WTO: the environment, social rights, and competition policy. Secondly, there is the question of further multilateral trade negotiations within the WTO, initially necessary in order to complete the unfinished business of the Uruguay Round. Finally, two other unrelated issues will have to be addressed: the possibility of extending WTO membership to China and other states; and the effect of global trade liberalisation on the preferences given in favour of developing countries.

This chapter provides a very brief outline of each of these issues, including, where relevant, references to official statements by the European Parliament.

i) Trade and the environment⁷³

There are two basic issues here. The first is to consider what impact the expansion of world trade is having on the environment, and to examine ways of making the expansion of trade compatible with sustainable development. The second issue is best put in the form a question: should the GATT/WTO multilateral trading rules allow (or even oblige) countries to ban or limit imports from other countries on the grounds that the processes and production methods (PPM) of that product in some way damages the environment? In other words, should minimum acceptable environmental standards be agreed upon and administered within the WTO?⁷⁴

It is the second of these two issues that has attracted most attention. The harmonisation of global environmental standards and their enforcement by the WTO is supported by a strong if unlikely alliance between environmental and business groups from industrialised countries. The environmentalists are keen to see the integration of economic and environmental decision-making, and see the "greening" of trade policy as one way of achieving this. Business interests in industrialised countries argue that they are being put at a competitive disadvantage by having to meet higher environmental standards than their competitors in developing countries, and see the global harmonisation of standards as a means of creating a level playing field.

Opposition comes mainly from developing countries, who argue that the trade-environment agenda is being driven by the concerns of protectionist lobbies in the developed world. They claim that poverty and underdevelopment are the root causes of environmental damage in developing countries and conclude from this that trade restrictions, by inhibiting economic development and wealth creating activities, would merely exacerbate environmental problems. They further point out that most environmental damage occurs in developed countries in any case. On both these points, the developing countries are backed up by a

⁷³ For a more detailed analysis of some of the environmental issues with which the WTO will have to deal, see SHAW, Nevin and COSBEY, Aaron, "GATT, the WTO and Sustainable Development", *International Environmental Affairs*, 6,3, Summer 1994.

⁷⁴ Currently, GATT Rules (Article XX B and G) only concern the contents of a product, and not the processes and methods used in production. In 1991 and 1994 two reports by GATT dispute panels condemned an embargo unilaterally imposed by the US on tuna imports from Mexico. The US had taken this action because it believed that dolphins were being unnecessarily killed as a result of the methods used by the Mexicans to catch tuna. Such action could only be legal within the GATT/WTO if the multilateral trading rules included provisions on minimal environmental standards. In the absence of any such provisions, any verdict other than the one reached by the two panels would raise real issues of sovereignty and therefore risk undermining the whole GATT/WTO legal system.

significant body of academic opinion. Opposition to using the WTO as a forum for introducing global environmental standards also comes from those who fear that the WTO is being pressurised into becoming an environmental agency, and is therefore being diverted away from its main objective, which must be the promotion and defence of a fair multilateral trading system.

The WTO is not meant to be an environmental organisation. Minimum environmental standards are therefore to be negotiated outside the WTO. However, the establishment of such an international organisation would be welcomed. Meanwhile existing international conventions on the environment would have to be completed. In this way a network of specific obligations covering all 'polluters' would be put in place. If these rules are being violated and in doing so violators would obtain a competitive advantage in international trade, then the matter should be submitted to the WTO in order to consider trade restrictions against violators.⁷⁵ This approach which is known as the 'gateway approach', would link trade to environment issues while at the same time avoiding the criticism of protectionism. However, the gateway approach has a built-in weakness. States can not be forced to enter into international conventions.

Negotiations on the trade and environment issue will take place in the WTO Committee on Trade and Environment, and will build on the conclusions of the UN Conference on Environment and Development, held in Rio de Janeiro in June 1992. Although agreement on minimum environmental standards across the board is unlikely, it is possible that GATT/WTO rules will be adapted to allow for the suspension of trade concessions in the case of a member country not respecting certain clauses of multilateral environmental agreements. The European Parliament expressed its support for changes in this direction, and has also called for a moratorium on GATT/WTO challenges to legislation that seeks to protect the environment, in order to allow time for constructive talks to take place within the WTO Committee on Trade and Environment.⁷⁶

ii) Social rights⁷⁷

Should the multilateral trading rules administered by the WTO include a social clause which sets down minimum global standards with regard to working conditions? And should countries therefore be allowed (or even obliged) to refuse or limit the import of goods whose production involves an infringement of such minimum standards?

In many respects the question of introducing a social clause into the multilateral trading rules is very similar to the question of whether or not to set down minimum environmental standards. To begin with, both issues are highly emotional and cannot easily be reduced to cold economic calculation. Secondly, setting common standards in social or environmental matters would introduce value judgments into the GATT/WTO rules for the first time, perhaps undermining the integrity of the GATT/WTO as an impartial guarantor of free trade. Thirdly, both would involve a subtle, but fundamental inversion of the way the multilateral trading rules work. Until now trade restriction has only ever been a right and not an obligation (and even then only by way of derogation from the main GATT principles). The introduction of

⁷⁵ Eventually the wording (or legal interpretation) of Article XX B and G would have to be amended.

⁷⁶ EUROPEAN PARLIAMENT, *Resolution of 22 January 1993 on environment and trade*, OJ C 42, 15.02.93, p.246. and EUROPEAN PARLIAMENT, *Resolution of 15 December 1994 on conclusion of the Uruguay Round and future activities of the WTO*, Minutes of that Sitting, Part II, Item 7.

⁷⁷ For a more detailed analysis of some of the issues mentioned here, see CHARNOVITZ, Steve, "The World Trade Organisation and Social Issues", *The Journal of World Trade*, Vol. 28, No. 5, October 1994.

minimum environmental and/or social standards could make the imposition of trade restrictions an obligation in certain cases. Finally, in both cases, it tends to be interest groups in the industrialised countries that support the harmonisation of global rules, while developing countries believe that their real motive is to create new protectionist barriers.

In the case of a social clause, the forces in favour are business groups, trade unions and human rights organisations. Business groups in developed countries apply the same logic as in the case of environmental standards i.e. that businesses in developing countries enjoy an unfair competitive advantage because they do not have to meet such high standards with regard to safety standards, minimum wages, social security and so on. Trade unions see jobs threatened by this greater competitiveness of developing countries and so support calls for a level playing field. If no minimum standards are set, they also fear that competition between social standards will lead to a "race to the bottom" in which Western workers could lose some of the gains that have been made over the last century. Human rights organisations generally support the introduction of a social clause because they see minimum social standards and working conditions as basic human rights. In particular they wish to outlaw such practices as the use of child labour.

Developing countries, who would generally be the target of any social clause, claim that social and working conditions are not basic human rights, but are development dependent. As such, the coexistence of different social standards simply reflects different levels of productivity and development, and will not necessarily lead to a race to the bottom. Furthermore, as with the environment, it is argued that the way to raise standards is to increase prosperity, and a social clause might in fact make this more difficult since it could undermine the competitive advantage of cheap labour and mean restricted access to the markets of industrialised countries.

It is unlikely that a social clause would be introduced under the auspices of the WTO alone. The International Labour Organisation (ILO) would also have to be involved, and indeed a number of ILO conventions, on such matters as child labour and the right to form and join trade unions, would serve as a useful starting point. The existence of a monitoring system under the ILO to check compliance with its fundamental principles brings the problem nearer to a solution as compared to the trade and environment issue. In the latter area an integrated network of environmental conventions is still lacking. However, there is no specific forum available in the WTO to discuss trade and social rights as is the case for trade and environment. With the Marrakesh declaration a procedural opening has been created to initiate the debate on social clauses in the WTO. This will require unanimity. Developing countries are most likely to oppose this. Therefore, industrialised countries will have to convince developing countries first of the necessity for rationalising the debate. They will have to show that the introduction of social clauses in the world trade order is not led by protectionists aspirations, but reflects their general opinion that trade advantages can not be achieved by violating fundamental principles of social behaviour.

Many of the EC member states are in favour of pursuing discussions within the WTO, and the French Presidency at the start of 1995 had made this one of its priorities. The United Kingdom has however expressed its reservations about the introduction of a social clause.⁷⁸

The European Parliament has been active and unambiguous in its calls for action in this area. It drew up and passed a detailed resolution on 9 February 1994 calling for a social clause to be introduced into the multilateral trading system.⁷⁹

⁷⁸ "France to push workers' rights in WTO", *Financial Times*, 2 February 1994.

⁷⁹ EUROPEAN PARLIAMENT, *Resolution on the introduction of a social clause in the unilateral and multilateral trading system*, OJ C 61, 28.02.1994, p.89.

iii) Competition policy and investment

The use of the WTO as a forum for moving towards the global harmonisation or approximation of national competition policies is a less emotional issue than the introduction of minimum environmental and/or social standards. It can more easily be reduced to calculations about economic efficiency, and does not rely so much on subjective definitions of fairness and equity. It is nevertheless still a controversial and complex legal issue, not least because of its implications for national sovereignty.

The need for a global harmonisation of competition policies arises from the increasing integration of the world market, which is itself partly the result of the success of gradual multilateral trade liberalisation within the GATT. In the words of one observer, *"as economies become increasingly integrated, true global competition becomes less a matter of stripping away tariffs and quotas than of ironing out inconsistencies in domestic policy regimes such as those governing monopoly and cartel behaviour."*⁸⁰

In spite of the apparent need for a harmonisation of global competition policy, the establishment of a comprehensive set of international rules in this area is not currently a realistic target. For the moment, any progress that is made will come in the form of bilateral and plurilateral agreements on particular issues, along the lines of the bilateral agreement reached between the US and the EC in 1990.

Where some progress may be made on global rules is in the field of cross-border investment. Much current domestic legislation, especially in developing countries, discriminates against foreign investors. Sir Leon Brittan has suggested that the WTO is the appropriate forum for negotiations leading to global investment rules.⁸¹ Such rules as currently exist in this area are non-binding and are the preserve of the OECD, which means developing country WTO members are excluded.

iv) Ongoing negotiations

The process of multilateral trade liberalisation has not stopped with the conclusion of the Uruguay Round. Further negotiations can be expected at some stage in almost all those areas where barriers to trade remain in spite of the Uruguay Round. In the short-medium term, negotiating activity will focus on the most obvious areas of unfinished business. These areas include: financial services, telecommunications, civil aircraft and steel.

The agreement on services reached during the Uruguay Round included a decision to set up work programmes for further negotiations on the following issues: telecommunications, maritime transport, financial services, professional services and the movement of persons. Although the Uruguay Round negotiations on civil aircraft and steel were not completed, no new negotiations are currently taking place. This is mainly due to opposition on the part of the US.

⁸⁰ CABLE, Vincent, "GATT and After", *The World Today*, February 1994.

⁸¹ Communication from the Commission to the Council, SEC-95(042); See also "Brittan wants WTO rules for investment", *Financial Times*, 19 January 1995, p.6.

End of July 1995 a substantial consensus was reached in the WTO on a Financial Services Agreement which will considerably liberalise trade in the sector.⁸² Of some 76 WTO Members with commitments in the financial services sector, around 30 (counting the EU as one) offered improvements which led up to this agreement. However, the US does not take part in it. The US is of the opinion that the commitments of a number of countries do not provide enough genuine market opening. Since the results of the negotiations will apply to all WTO Members, the United States believes that acceptance of inadequate offers would allow 'free-riders' to benefit from greater liberalisation of others.

In effect the agreement means that the best offers negotiated over the past two years and, especially, the last few months, with the exception of that of the United States, will be implemented for an initial period up to 1 November 1997. At that point, Members will again have an opportunity (during the following 60 days) to modify or improve their offers on financial services schedules and to take MFN exemptions in the sector. It may well be that new negotiations on financial services will take place at that time.

The Protocol to which the new financial services schedules are annexed is open for acceptance until 30 June 1996 in order to allow Members time for domestic ratification procedures. The Protocol, and therefore the commitments, will enter into force 30 days after acceptance by all Members concerned. If, by 1 July 1996, all concerned Members have not accepted the Protocol a decision will be made within the following 30 days as to whether or not it can enter into force. During the period prior to entry into force Members have undertaken not to take measures which would be inconsistent with their future commitments.

v) Prospect of China joining the WTO

China signed a provisional agreement on the application of GATT in 1948, but withdrew very soon afterwards (after the Communist take-over). For some years the seat of China was taken by Taipei, but with the formal recognition of the one-China policy by the UN, Taipei was excluded from the GATT (as a special agency of the UN) on 6 March 1950. In 1986 China indicated a wish to resume membership, and a GATT working party was set up in 1987 to discuss the issue. It had wished to rejoin the GATT prior to 1995 in order to become a founding member of the WTO, but difficulties with accession negotiations meant that this was not possible. Problems still remain with regard to financial services (banks and insurance) and cars. Also, the US is currently involved in a serious dispute with the Chinese over intellectual property rights and the manufacture of counterfeit goods, and this seems likely to delay further discussions over WTO membership. Behind these more practical issues lies the emotional question of human rights abuses in China. This question makes many Western governments very reluctant to entertain the prospect of China acceding to the WTO.

In spite of these problems, it is probably in the long-term interests of the EC and all other WTO members that China eventually be allowed to join. The size of its market, its phenomenal growth rates of the last few years and its ever growing importance in terms of world trade all make its exclusion from the WTO increasingly illogical. The European Parliament takes the view that both China and Taiwan should become members of the WTO.⁸³ It is in favour of future Chinese membership provided that China is ready to respect all WTO obligations and prepared to make significant concessions in market access.

⁸² Financial services was the only sector in which negotiations were taking place. A negotiating group on financial services was set up in September 1994, against the will of the US. On 30 June 1995 the Council for Trade in Services extended the deadline, set to expire that day, on negotiations for a multilateral agreement after the US had withdrawn its earlier made commitments.

⁸³ EUROPEAN PARLIAMENT, *Resolution of 14 June 1995 on the communication from the Commission to the Council 'Towards a new Asia strategy'*, Minutes of the Sitting, Part II, Item 43 and 44.

At the same time it also supports the request of the government of Taiwan to become a member.⁸⁴ The delicate political issue of the timing of their entry is still pending. Taiwan is far more ready to join than China, but it will not allow to have Taipei become a member before its own entry. A solution to this problem would consist in having China sign the Agreement first but would be given a longer transition period to fully comply with WTO obligations.

The WTO will also have to deal with applications from other countries as well as China. A total of 24 countries, all from the developing world, became GATT contracting parties during the Uruguay Round, and more wish to join the WTO. Taiwan and a number of former Soviet Republics have already applied. Russia has been included amongst those countries expected to apply for WTO membership in the not too distant future.

vi) The fate of developing countries

In theory, the less influential, third-world members of the WTO should stand to gain most from the creation of the WTO and its greater ability to limit the unilateral policies of stronger members. The fear among many developing countries, however, is that the new WTO will remain an instrument to be used and abused by the industrialised world. These fears are heightened by talk of extending the jurisdiction of the WTO to cover environmental and social standards. The WTO will have to be bold in asserting its independence if the suspicions of developing countries are not to be proved correct. In this respect, the WTO Committee on Trade and Development also has an important role to play in addressing the concerns of developing countries.

A more practical concern of developing countries is that multilateral trade liberalisation is gradually eroding the tariff preferences that they enjoy in certain industrialised markets. As far as the EC is concerned, the most important issue here is the future of the Lomé Convention, which governs EC relations with the 69 members of the African, Caribbean and Pacific Group (ACP). Generous tariff preferences, including duty-free access for almost all industrial products, have been a fundamental part of the Lomé Convention, but their value is seriously undermined by the Uruguay Round and the prospect of further trade liberalisation.⁸⁵

So long as the trend towards the global liberalisation of trade continues, there is no way of avoiding this problem. ACP States and other developing countries with preferences in industrialised markets will have to focus their attention on ways of increasing their competitiveness. It looks increasingly likely that the Lomé arrangements will not in any case survive beyond the expiry of the current Convention in 1999, and raising the competitiveness of ACP states will be main objective behind any new arrangements.⁸⁶

More than thirty developing countries have already joined the GATT. This trend seems to contradict criticism on the overall negative impact of the Uruguay Round results on their economies. In reality developing countries are increasingly changing their development strategy, replacing a policy of import substitutes by an exports-oriented policy.

⁸⁴ Separate membership is possible, since under GATT a customs territory can apply for membership. Taiwan has a separate customs territory and Taipei applied under its island's name.

⁸⁵ Tariff preferences in favour of developing countries require a waiver from the MFN clause and the principle of non-discrimination. Such waivers can be granted in accordance with the "enabling clause" adopted as part of the Tokyo Round, which allows for developing countries to obtain a special and more favourable treatment. On 20 December 1994, the Lomé Convention was granted a further five year waiver.

⁸⁶ "Seeking to aim aid at competitiveness", *Financial Times*, Wednesday, 15 February, p.5.

ANNEX I

THE CURRENT STATE OF GATT AND WTO MEMBERSHIP

51-52

WTO CONTRACTING PARTIES

As of 31 January 1995, the following 76 countries were members of the WTO:

Antigua and Barbuda	Luxembourg
Argentina	Macau
Australia	Malaysia
Austria	Malta
Bahrain	Mauritius
Bangladesh	Mexico
Barbados	Morocco
Belgium	Myanmar
Belize	Namibia
Brazil	Netherlands
Brunei Darussalam	New Zealand
Canada	Nigeria
Chile	Norway
Costa Rica	Pakistan
Côte d'Ivoire	Paraguay
Czech Republic	Peru
Denmark	Philippines
Dominica	Portugal
EC	Romania
Finland	Saint Lucia
France	Saint Vincent & Gren
Gabon	Senegal
Germany	Singapore
Ghana	Slovak Republic
Greece	South Africa
Guyana	Spain
Honduras	Sri Lanka
Hong Kong	Surinam
Hungary	Swaziland
Iceland	Sweden
India	Tanzania
Indonesia	Thailand
Ireland	Uganda
Italy	United Kingdom
Japan	United States
Kenya	Uruguay
Korea	Venezuela
Kuwait	Zambia

Note: More than 50 countries are in a position to join the WTO in the near future. Most of these countries are due to become members as soon as they have completed the verification of their market access and services commitments and/or upon the completion of their domestic ratification procedures for accepting the WTO under Article XII of the WTO Agreement

GATT CONTRACTING PARTIES

The following 128 countries are contracting parties of the GATT (with date of accession) (*= developing country members 68; °= least developing country members 29):

*Angola	8 April 1994	Liechtenstein	29 March 1994
*Antigua and Barbuda	30 March 1987	Luxembourg	1 January 1948
*Argentina	11 October 1967	*Macau	11 January 1991
Australia	1 January 1948	°Madagascar	30 September 1963
Austria	19 October 1951	°Malawi	28 August 1964
*Bahrain	13 December 1993	*Malaysia	24 October 1957
°Bangladesh	16 December 1972	°Maldives	19 April 1983
*Barbados	15 February 1967	°Mali	1 January 1993
Belgium	1 January 1948	*Malta	17 November 1964
*Belize	7 October 1983	°Mauritania	30 September 1963
°Benin	12 September 1963	*Mauritius	2 September 1970
*Bolivia	8 September 1990	*Mexico	24 August 1986
°Botswana	28 August 1987	*Morocco	17 June 1987
*Brazil	30 July 1948	°Mozambique	27 July 1992
*Brunei	9 December 1993	°Myanmar	29 July 1948
°Burkina Faso	3 May 1963	*Namibia	15 September 1992
°Burundi	13 March 1965	Netherlands	1 January 1948
*Cameroon	3 May 1963	New Zealand	30 July 1948
Canada	1 January 1948	*Nicaragua	28 May 1950
°Central African Rep.	3 May 1963	°Niger	31 December 1963
°Chad	12 July 1963	*Nigeria	18 November 1960
*Chile	16 March 1949	Norway	10 July 1948
*Colombia	3 October 1981	*Pakistan	30 July 1948
*Congo	3 May 1963	Papua New Guinea	16 December 1994
*Costa Rica	24 November 1990	*Paraguay	6 January 1994
*Côte d'Ivoire	31 December 1963	*Peru	7 October 1951
*Cuba	1 January 1948	*Philippines	27 December 1979
*Cyprus	15 July 1963	Poland	18 October 1967
Czech Republic	15 April 1993	Portugal	6 May 1962
Denmark	28 May 1950	*Qatar	7 April 1994
°Djibouti	16 December 1994	*Romania	14 November 1971
*Dominica	20 April 1993	°Rwanda	1 January 1966
*Dominican Republic	19 May 1950	*St. Kitts & Nevis	24 March 1994
*Egypt	9 May 1970	*St. Lucia	13 April 1993
*El Salvador	22 May 1991	*St. Vincent & Grenadines	18 May 1993
*Fiji	16 November 1993	*Senegal	27 September 1963
Finland	25 May 1950	°Sierra Leone	19 May 1961
France	1 January 1948	*Singapore	20 August 1973
*Gabon	3 May 1963	Slovak Republic	15 April 1993
°Gambia	22 February 1965	Slovenia	30 October 1994
Germany	1 October 1951	°Solomon Islands	28 December 1994
*Ghana	17 October 1957	South Africa	13 June 1948
Greece	1 March 1950	Spain	29 August 1963
*Grenada	9 February 1994	*Sri Lanka	29 July 1948
*Guatemala	10 October 1991	*Surinam	22 March 1978
°Guinea, Rep. of	8 December 1994	*Swaziland	8 February 1993
°Guinea-Bissau	17 March 1994	Sweden	30 April 1950
*Guyana	5 July 1966	Switzerland	1 August 1966
°Haiti	1 January 1950	°Tanzania	9 December 1961
*Honduras	10 April 1994	*Thailand	20 November 1982
*Hong Kong	23 April 1986	°Togo	20 March 1964
Hungary	9 September 1973	*Trinidad and Tobago	23 October 1962
Iceland	21 April 1968	*Tunisia	19 August 1990
*India	8 July 1948	*Turkey	17 October 1951
*Indonesia	24 February 1950	°Uganda	23 October 1962
Ireland	22 December 1967	*United Arab Emirates	8 March 1994
*Israel	5 July 1962	United Kingdom	1 January 1948
Italy	30 May 1950	*Uruguay	6 December 1953
*Jamaica	31 December 1963	USA	1 January 1948
Japan	10 September 1955	*Venezuela	31 August 1990
*Kenya	5 February 1961	*Yugoslavia	25 August 1966
*Korea, Rep. of	14 April 1967	°Zaire	11 September 1971
°Kuwait	3 May 1963	°Zambia	10 February 1982
°Lesotho	8 January 1988	*Zimbabwe	11 July 1948

ANNEX II

**THE FINAL ACT EMBODYING THE RESULTS OF THE URUGUAY ROUND OF
MULTILATERAL TRADE NEGOTIATIONS**

**FINAL ACT EMBODYING THE RESULTS OF THE
URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS**

Marrakesh, 15 April 1994

1. Having met in order to conclude the Uruguay Round of Multilateral Trade Negotiations, representatives of the governments and of the European Communities, members of the Trade Negotiations Committee, *agree* that the Agreement Establishing the World Trade Organization (referred to in this Final Act as the "WTO Agreement"), the Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services, as annexed hereto, embody the results of their negotiations and form an integral part of this Final Act.
2. By signing the present Final Act, the representatives *agree*
 - (a) to submit, as appropriate, the WTO Agreement for the consideration of their respective competent authorities with a view to seeking approval of the Agreement in accordance with their procedures; and
 - (b) to adopt the Ministerial Declarations and Decisions.
3. The representatives *agree* on the desirability of acceptance of the WTO Agreement by all participants in the Uruguay Round of Multilateral Trade Negotiations (hereinafter referred to as "participants") with a view to its entry into force by 1 January 1995, or as early as possible thereafter. Not later than late 1994, Ministers will meet, in accordance with the final paragraph of the Punta del Este Ministerial Declaration, to decide on the international implementation of the results, including the timing of their entry into force.
4. The representatives *agree* that the WTO Agreement shall be open for acceptance as a whole, by signature or otherwise, by all participants pursuant to Article XIV thereof. The acceptance and entry into force of a Plurilateral Trade Agreement included in Annex 4 of the WTO Agreement shall be governed by the provisions of that Plurilateral Trade Agreement.
5. Before accepting the WTO Agreement, participants which are not contracting parties to the General Agreement on Tariffs and Trade must first have concluded negotiations for their accession to the General Agreement and become contracting parties thereto. For participants which are not contracting parties to the General Agreement as of the date of the Final Act, the Schedules are not definitive and shall be subsequently completed for the purpose of their accession to the General Agreement and acceptance of the WTO Agreement.
6. This Final Act and the texts annexed hereto shall be deposited with the Director-General to the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade who shall promptly furnish to each participant a certified copy thereof.

DONE at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four, in a single copy, in the English, French and Spanish languages, each text being authentic.

[List of signatures to be included in the treaty copy of the Final Act for signature]

ANNEX III

THE AGREEMENT ESTABLISHING THE WORLD TRADE ORGANISATION

59-60

**AGREEMENT ESTABLISHING THE
WORLD TRADE ORGANIZATION**

The *Parties* to this Agreement,

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,

Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development,

Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations,

Resolved, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations,

Determined to preserve the basic principles and to further the objectives underlying this multilateral trading system,

Agree as follows:

Article I

Establishment of the Organization

The World Trade Organization (hereinafter referred to as "the WTO") is hereby established.

Article II

Scope of the WTO

1. The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement.
2. The agreements and associated legal instruments included in Annexes 1, 2 and 3 (hereinafter referred to as "Multilateral Trade Agreements") are integral parts of this Agreement, binding on all Members.
3. The agreements and associated legal instruments included in Annex 4 (hereinafter referred to as "Plurilateral Trade Agreements") are also part of this Agreement for those Members that have accepted them, and are binding on those Members. The Plurilateral Trade Agreements do not create either obligations or rights for Members that have not accepted them.

4. The General Agreement on Tariffs and Trade 1994 as specified in Annex 1A (hereinafter referred to as "GATT 1994") is legally distinct from the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as subsequently rectified, amended or modified (hereinafter referred to as "GATT 1947").

Article III

Functions of the WTO

1. The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.

2. The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.

3. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the "Dispute Settlement Understanding" or "DSU") in Annex 2 to this Agreement.

4. The WTO shall administer the Trade Policy Review Mechanism (hereinafter referred to as the "TPRM") provided for in Annex 3 to this Agreement.

5. With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.

Article IV

Structure of the WTO

1. There shall be a Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years. The Ministerial Conference shall carry out the functions of the WTO and take actions necessary to this effect. The Ministerial Conference shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Member, in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement.

2. There shall be a General Council composed of representatives of all the Members, which shall meet as appropriate. In the intervals between meetings of the Ministerial Conference, its functions shall be conducted by the General Council. The General Council shall also carry out the functions assigned to it by this Agreement. The General Council shall establish its rules of procedure and approve the rules of procedure for the Committees provided for in paragraph 7.

3. The General Council shall convene as appropriate to discharge the responsibilities of the Dispute Settlement Body provided for in the Dispute Settlement Understanding. The Dispute Settlement Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities.

4. The General Council shall convene as appropriate to discharge the responsibilities of the Trade Policy Review Body provided for in the TPRM. The Trade Policy Review Body may have its own

chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities.

5. There shall be a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Council for TRIPS"), which shall operate under the general guidance of the General Council. The Council for Trade in Goods shall oversee the functioning of the Multilateral Trade Agreements in Annex IA. The Council for Trade in Services shall oversee the functioning of the General Agreement on Trade in Services (hereinafter referred to as "GATS"). The Council for TRIPS shall oversee the functioning of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Agreement on TRIPS"). These Councils shall carry out the functions assigned to them by their respective agreements and by the General Council. They shall establish their respective rules of procedure subject to the approval of the General Council. Membership in these Councils shall be open to representatives of all Members. These Councils shall meet as necessary to carry out their functions.

6. The Council for Trade in Goods, the Council for Trade in Services and the Council for TRIPS shall establish subsidiary bodies as required. These subsidiary bodies shall establish their respective rules of procedure subject to the approval of their respective Councils.

7. The Ministerial Conference shall establish a Committee on Trade and Development, a Committee on Balance-of-Payments Restrictions and a Committee on Budget, Finance and Administration, which shall carry out the functions assigned to them by this Agreement and by the Multilateral Trade Agreements, and any additional functions assigned to them by the General Council, and may establish such additional Committees with such functions as it may deem appropriate. As part of its functions, the Committee on Trade and Development shall periodically review the special provisions in the Multilateral Trade Agreements in favour of the least-developed country Members and report to the General Council for appropriate action. Membership in these Committees shall be open to representatives of all Members.

8. The bodies provided for under the Plurilateral Trade Agreements shall carry out the functions assigned to them under those Agreements and shall operate within the institutional framework of the WTO. These bodies shall keep the General Council informed of their activities on a regular basis.

Article V

Relations with Other Organizations

1. The General Council shall make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO.

2. The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO.

Article VI

The Secretariat

1. There shall be a Secretariat of the WTO (hereinafter referred to as "the Secretariat") headed by a Director-General.

2. The Ministerial Conference shall appoint the Director-General and adopt regulations setting out the powers, duties, conditions of service and term of office of the Director-General.

3. The Director-General shall appoint the members of the staff of the Secretariat and determine their duties and conditions of service in accordance with regulations adopted by the Ministerial Conference.

4. The responsibilities of the Director-General and of the staff of the Secretariat shall be exclusively international in character. In the discharge of their duties, the Director-General and the staff of the Secretariat shall not seek or accept instructions from any government or any other authority external to the WTO. They shall refrain from any action which might adversely reflect on their position as international officials. The Members of the WTO shall respect the international character of the responsibilities of the Director-General and of the staff of the Secretariat and shall not seek to influence them in the discharge of their duties.

Article VII

Budget and Contributions

1. The Director-General shall present to the Committee on Budget, Finance and Administration the annual budget estimate and financial statement of the WTO. The Committee on Budget, Finance and Administration shall review the annual budget estimate and the financial statement presented by the Director-General and make recommendations thereon to the General Council. The annual budget estimate shall be subject to approval by the General Council.

2. The Committee on Budget, Finance and Administration shall propose to the General Council financial regulations which shall include provisions setting out:

- (a) the scale of contributions apportioning the expenses of the WTO among its Members; and
- (b) the measures to be taken in respect of Members in arrears.

The financial regulations shall be based, as far as practicable, on the regulations and practices of GATT 1947.

3. The General Council shall adopt the financial regulations and the annual budget estimate by a two-thirds majority comprising more than half of the Members of the WTO.

4. Each Member shall promptly contribute to the WTO its share in the expenses of the WTO in accordance with the financial regulations adopted by the General Council.

Article VIII

Status of the WTO

1. The WTO shall have legal personality, and shall be accorded by each of its Members such legal capacity as may be necessary for the exercise of its functions.

2. The WTO shall be accorded by each of its Members such privileges and immunities as are necessary for the exercise of its functions.

3. The officials of the WTO and the representatives of the Members shall similarly be accorded by each of its Members such privileges and immunities as are necessary for the independent exercise of their functions in connection with the WTO.

4. The privileges and immunities to be accorded by a Member to the WTO, its officials, and the representatives of its Members shall be similar to the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947.

5. The WTO may conclude a headquarters agreement.

*Article IX**Decision-Making*

1. The WTO shall continue the practice of decision-making by consensus followed under GATT 1947.¹ Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. At meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote. Where the European Communities exercise their right to vote, they shall have a number of votes equal to the number of their member States² which are Members of the WTO. Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, unless otherwise provided in this Agreement or in the relevant Multilateral Trade Agreement.³

2. The Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements. In the case of an interpretation of a Multilateral Trade Agreement in Annex 1, they shall exercise their authority on the basis of a recommendation by the Council overseeing the functioning of that Agreement. The decision to adopt an interpretation shall be taken by a three-fourths majority of the Members. This paragraph shall not be used in a manner that would undermine the amendment provisions in Article X.

3. In exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements, provided that any such decision shall be taken by three fourths⁴ of the Members unless otherwise provided for in this paragraph.

- (a) A request for a waiver concerning this Agreement shall be submitted to the Ministerial Conference for consideration pursuant to the practice of decision-making by consensus. The Ministerial Conference shall establish a time-period, which shall not exceed 90 days, to consider the request. If consensus is not reached during the time-period, any decision to grant a waiver shall be taken by three fourths⁴ of the Members.
- (b) A request for a waiver concerning the Multilateral Trade Agreements in Annexes 1A or 1B or 1C and their annexes shall be submitted initially to the Council for Trade in Goods, the Council for Trade in Services or the Council for TRIPS, respectively, for consideration during a time-period which shall not exceed 90 days. At the end of the time-period, the relevant Council shall submit a report to the Ministerial Conference.

4. A decision by the Ministerial Conference granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate. Any waiver granted for a period of more than one year shall be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates. In each review, the Ministerial Conference shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The Ministerial Conference, on the basis of the annual review, may extend, modify or terminate the waiver.

¹The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision

²The number of votes of the European Communities and their member States shall in no case exceed the number of the member States of the European Communities

³Decisions by the General Council when convened as the Dispute Settlement Body shall be taken only in accordance with the provisions of paragraph 4 of Article 2 of the Dispute Settlement Understanding.

⁴A decision to grant a waiver in respect of any obligation subject to a transition period or a period for staged implementation that the requesting Member has not performed by the end of the relevant period shall be taken only by consensus

5. Decisions under a Plurilateral Trade Agreement, including any decisions on interpretations and waivers, shall be governed by the provisions of that Agreement.

Article X

Amendments

1. Any Member of the WTO may initiate a proposal to amend the provisions of this Agreement or the Multilateral Trade Agreements in Annex 1 by submitting such proposal to the Ministerial Conference. The Councils listed in paragraph 5 of Article IV may also submit to the Ministerial Conference proposals to amend the provisions of the corresponding Multilateral Trade Agreements in Annex 1 the functioning of which they oversee. Unless the Ministerial Conference decides on a longer period, for a period of 90 days after the proposal has been tabled formally at the Ministerial Conference any decision by the Ministerial Conference to submit the proposed amendment to the Members for acceptance shall be taken by consensus. Unless the provisions of paragraphs 2, 5 or 6 apply, that decision shall specify whether the provisions of paragraphs 3 or 4 shall apply. If consensus is reached, the Ministerial Conference shall forthwith submit the proposed amendment to the Members for acceptance. If consensus is not reached at a meeting of the Ministerial Conference within the established period, the Ministerial Conference shall decide by a two-thirds majority of the Members whether to submit the proposed amendment to the Members for acceptance. Except as provided in paragraphs 2, 5 and 6, the provisions of paragraph 3 shall apply to the proposed amendment, unless the Ministerial Conference decides by a three-fourths majority of the Members that the provisions of paragraph 4 shall apply.

2. Amendments to the provisions of this Article and to the provisions of the following Articles shall take effect only upon acceptance by all Members:

Article IX of this Agreement;
Articles I and II of GATT 1994;
Article II:1 of GATS;
Article 4 of the Agreement on TRIPS.

3. Amendments to provisions of this Agreement, or of the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would alter the rights and obligations of the Members, shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each other Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under this paragraph is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference.

4. Amendments to provisions of this Agreement or of the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would not alter the rights and obligations of the Members, shall take effect for all Members upon acceptance by two thirds of the Members.

5. Except as provided in paragraph 2 above, amendments to Parts I, II and III of GATS and the respective annexes shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under the preceding provision is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference. Amendments to Parts IV, V and VI of GATS and the respective annexes shall take effect for all Members upon acceptance by two thirds of the Members.

6. Notwithstanding the other provisions of this Article, amendments to the Agreement on TRIPS meeting the requirements of paragraph 2 of Article 71 thereof may be adopted by the Ministerial Conference without further formal acceptance process.
7. Any Member accepting an amendment to this Agreement or to a Multilateral Trade Agreement in Annex 1 shall deposit an instrument of acceptance with the Director-General of the WTO within the period of acceptance specified by the Ministerial Conference.
8. Any Member of the WTO may initiate a proposal to amend the provisions of the Multilateral Trade Agreements in Annexes 2 and 3 by submitting such proposal to the Ministerial Conference. The decision to approve amendments to the Multilateral Trade Agreement in Annex 2 shall be made by consensus and these amendments shall take effect for all Members upon approval by the Ministerial Conference. Decisions to approve amendments to the Multilateral Trade Agreement in Annex 3 shall take effect for all Members upon approval by the Ministerial Conference.
9. The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide exclusively by consensus to add that agreement to Annex 4. The Ministerial Conference, upon the request of the Members parties to a Plurilateral Trade Agreement, may decide to delete that Agreement from Annex 4.
10. Amendments to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XI

Original Membership

1. The contracting parties to GATT 1947 as of the date of entry into force of this Agreement, and the European Communities, which accept this Agreement and the Multilateral Trade Agreements and for which Schedules of Concessions and Commitments are annexed to GATT 1994 and for which Schedules of Specific Commitments are annexed to GATS shall become original Members of the WTO.
2. The least-developed countries recognized as such by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

Article XII

Accession

1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.
2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.
3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

*Article XIII**Non-Application of Multilateral Trade Agreements
between Particular Members*

1. This Agreement and the Multilateral Trade Agreements in Annexes 1 and 2 shall not apply as between any Member and any other Member if either of the Members, at the time either becomes a Member, does not consent to such application.
2. Paragraph 1 may be invoked between original Members of the WTO which were contracting parties to GATT 1947 only where Article XXXV of that Agreement had been invoked earlier and was effective as between those contracting parties at the time of entry into force for them of this Agreement.
3. Paragraph 1 shall apply between a Member and another Member which has acceded under Article XII only if the Member not consenting to the application has so notified the Ministerial Conference before the approval of the agreement on the terms of accession by the Ministerial Conference.
4. The Ministerial Conference may review the operation of this Article in particular cases at the request of any Member and make appropriate recommendations.
5. Non-application of a Plurilateral Trade Agreement between parties to that Agreement shall be governed by the provisions of that Agreement.

*Article XIV**Acceptance, Entry into Force and Deposit*

1. This Agreement shall be open for acceptance, by signature or otherwise, by contracting parties to GATT 1947, and the European Communities, which are eligible to become original Members of the WTO in accordance with Article XI of this Agreement. Such acceptance shall apply to this Agreement and the Multilateral Trade Agreements annexed hereto. This Agreement and the Multilateral Trade Agreements annexed hereto shall enter into force on the date determined by Ministers in accordance with paragraph 3 of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations and shall remain open for acceptance for a period of two years following that date unless the Ministers decide otherwise. An acceptance following the entry into force of this Agreement shall enter into force on the 30th day following the date of such acceptance.
2. A Member which accepts this Agreement after its entry into force shall implement those concessions and obligations in the Multilateral Trade Agreements that are to be implemented over a period of time starting with the entry into force of this Agreement as if it had accepted this Agreement on the date of its entry into force.
3. Until the entry into force of this Agreement, the text of this Agreement and the Multilateral Trade Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. The Director-General shall promptly furnish a certified true copy of this Agreement and the Multilateral Trade Agreements, and a notification of each acceptance thereof, to each government and the European Communities having accepted this Agreement. This Agreement and the Multilateral Trade Agreements, and any amendments thereto, shall, upon the entry into force of this Agreement, be deposited with the Director-General of the WTO.
4. The acceptance and entry into force of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement. Such Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. Upon the entry into force of this Agreement, such Agreements shall be deposited with the Director-General of the WTO.

*Article XV**Withdrawal*

1. Any Member may withdraw from this Agreement. Such withdrawal shall apply both to this Agreement and the Multilateral Trade Agreements and shall take effect upon the expiration of six months from the date on which written notice of withdrawal is received by the Director-General of the WTO.
2. Withdrawal from a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

*Article XVI**Miscellaneous Provisions*

1. Except as otherwise provided under this Agreement or the Multilateral Trade Agreements, the WTO shall be guided by the decisions, procedures and customary practices followed by the CONTRACTING PARTIES to GATT 1947 and the bodies established in the framework of GATT 1947.
2. To the extent practicable, the Secretariat of GATT 1947 shall become the Secretariat of the WTO, and the Director-General to the CONTRACTING PARTIES to GATT 1947, until such time as the Ministerial Conference has appointed a Director-General in accordance with paragraph 2 of Article VI of this Agreement, shall serve as Director-General of the WTO.
3. In the event of a conflict between a provision of this Agreement and a provision of any of the Multilateral Trade Agreements, the provision of this Agreement shall prevail to the extent of the conflict.
4. Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.
5. No reservations may be made in respect of any provision of this Agreement. Reservations in respect of any of the provisions of the Multilateral Trade Agreements may only be made to the extent provided for in those Agreements. Reservations in respect of a provision of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.
6. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

DONE at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four, in a single copy, in the English, French and Spanish languages, each text being authentic.

Explanatory Notes:

The terms "country" or "countries" as used in this Agreement and the Multilateral Trade Agreements are to be understood to include any separate customs territory Member of the WTO.

In the case of a separate customs territory Member of the WTO, where an expression in this Agreement and the Multilateral Trade Agreements is qualified by the term "national", such expression shall be read as pertaining to that customs territory, unless otherwise specified.

ANNEX IV

**THE UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT
OF DISPUTES**

UNDERSTANDING ON RULES AND PROCEDURES GOVERNING THE SETTLEMENT OF DISPUTES

Members hereby agree as follows:

Article 1

Coverage and Application

1. The rules and procedures of this Understanding shall apply to disputes brought pursuant to the consultation and dispute settlement provisions of the agreements listed in Appendix 1 to this Understanding (referred to in this Understanding as the "covered agreements"). The rules and procedures of this Understanding shall also apply to consultations and the settlement of disputes between Members concerning their rights and obligations under the provisions of the Agreement Establishing the World Trade Organization (referred to in this Understanding as the "WTO Agreement") and of this Understanding taken in isolation or in combination with any other covered agreement.

2. The rules and procedures of this Understanding shall apply subject to such special or additional rules and procedures on dispute settlement contained in the covered agreements as are identified in Appendix 2 to this Understanding. To the extent that there is a difference between the rules and procedures of this Understanding and the special or additional rules and procedures set forth in Appendix 2, the special or additional rules and procedures in Appendix 2 shall prevail. In disputes involving rules and procedures under more than one covered agreement, if there is a conflict between special or additional rules and procedures of such agreements under review, and where the parties to the dispute cannot agree on rules and procedures within 20 days of the establishment of the panel, the Chairman of the Dispute Settlement Body provided for in paragraph 1 of Article 2 (referred to in this Understanding as the "DSB"), in consultation with the parties to the dispute, shall determine the rules and procedures to be followed within 10 days after a request by either Member. The Chairman shall be guided by the principle that special or additional rules and procedures should be used where possible, and the rules and procedures set out in this Understanding should be used to the extent necessary to avoid conflict.

Article 2

Administration

1. The Dispute Settlement Body is hereby established to administer these rules and procedures and, except as otherwise provided in a covered agreement, the consultation and dispute settlement provisions of the covered agreements. Accordingly, the DSB shall have the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions and other obligations under the covered agreements. With respect to disputes arising under a covered agreement which is a Plurilateral Trade Agreement, the term "Member" as used herein shall refer only to those Members that are parties to the relevant Plurilateral Trade Agreement. Where the DSB administers the dispute settlement provisions of a Plurilateral Trade Agreement, only those Members that are parties to that Agreement may participate in decisions or actions taken by the DSB with respect to that dispute.

2. The DSB shall inform the relevant WTO Councils and Committees of any developments in disputes related to provisions of the respective covered agreements.

3. The DSB shall meet as often as necessary to carry out its functions within the time-frames provided in this Understanding.
4. Where the rules and procedures of this Understanding provide for the DSB to take a decision, it shall do so by consensus.¹

Article 3

General Provisions

1. Members affirm their adherence to the principles for the management of disputes heretofore applied under Articles XXII and XXIII of GATT 1947, and the rules and procedures as further elaborated and modified herein.
2. The dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system. The Members recognize that it serves to preserve the rights and obligations of Members under the covered agreements, and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law. Recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements.
3. The prompt settlement of situations in which a Member considers that any benefits accruing to it directly or indirectly under the covered agreements are being impaired by measures taken by another Member is essential to the effective functioning of the WTO and the maintenance of a proper balance between the rights and obligations of Members.
4. Recommendations or rulings made by the DSB shall be aimed at achieving a satisfactory settlement of the matter in accordance with the rights and obligations under this Understanding and under the covered agreements.
5. All solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements, including arbitration awards, shall be consistent with those agreements and shall not nullify or impair benefits accruing to any Member under those agreements, nor impede the attainment of any objective of those agreements.
6. Mutually agreed solutions to matters formally raised under the consultation and dispute settlement provisions of the covered agreements shall be notified to the DSB and the relevant Councils and Committees, where any Member may raise any point relating thereto.
7. Before bringing a case, a Member shall exercise its judgement as to whether action under these procedures would be fruitful. The aim of the dispute settlement mechanism is to secure a positive solution to a dispute. A solution mutually acceptable to the parties to a dispute and consistent with the covered agreements is clearly to be preferred. In the absence of a mutually agreed solution, the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements. The provision of compensation should be resorted to only if the immediate withdrawal of the measure is impracticable and as a temporary measure pending the withdrawal of the measure which is inconsistent with a covered agreement. The last resort which this Understanding provides to the Member invoking the dispute settlement procedures is the possibility of suspending the application of concessions or other obligations under the covered agreements on a discriminatory basis vis-à-vis the other Member, subject to authorization by the DSB of such measures

¹The DSB shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting of the DSB when the decision is taken, formally objects to the proposed decision.

8. In cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment. This means that there is normally a presumption that a breach of the rules has an adverse impact on other Members parties to that covered agreement, and in such cases, it shall be up to the Member against whom the complaint has been brought to rebut the charge.

9. The provisions of this Understanding are without prejudice to the rights of Members to seek authoritative interpretation of provisions of a covered agreement through decision-making under the WTO Agreement or a covered agreement which is a Plurilateral Trade Agreement.

10. It is understood that requests for conciliation and the use of the dispute settlement procedures should not be intended or considered as contentious acts and that, if a dispute arises, all Members will engage in these procedures in good faith in an effort to resolve the dispute. It is also understood that complaints and counter-complaints in regard to distinct matters should not be linked.

11. This Understanding shall be applied only with respect to new requests for consultations under the consultation provisions of the covered agreements made on or after the date of entry into force of the WTO Agreement. With respect to disputes for which the request for consultations was made under GATT 1947 or under any other predecessor agreement to the covered agreements before the date of entry into force of the WTO Agreement, the relevant dispute settlement rules and procedures in effect immediately prior to the date of entry into force of the WTO Agreement shall continue to apply.²

12. Notwithstanding paragraph 11, if a complaint based on any of the covered agreements is brought by a developing country Member against a developed country Member, the complaining party shall have the right to invoke, as an alternative to the provisions contained in Articles 4, 5, 6 and 12 of this Understanding, the corresponding provisions of the Decision of 5 April 1966 (BISD 14S/18), except that where the Panel considers that the time-frame provided for in paragraph 7 of that Decision is insufficient to provide its report and with the agreement of the complaining party, that time-frame may be extended. To the extent that there is a difference between the rules and procedures of Articles 4, 5, 6 and 12 and the corresponding rules and procedures of the Decision, the latter shall prevail.

Article 4

Consultations

1. Members affirm their resolve to strengthen and improve the effectiveness of the consultation procedures employed by Members.

2. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of any covered agreement taken within the territory of the former.³

3. If a request for consultations is made pursuant to a covered agreement, the Member to which the request is made shall, unless otherwise mutually agreed, reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. If the Member does not respond within 10 days after the date of receipt of the request, or does not

²This paragraph shall also be applied to disputes on which panel reports have not been adopted or fully implemented.

³Where the provisions of any other covered agreement concerning measures taken by regional or local governments or authorities within the territory of a Member contain provisions different from the provisions of this paragraph, the provisions of such other covered agreement shall prevail.

enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the Member that requested the holding of consultations may proceed directly to request the establishment of a panel.

4. All such requests for consultations shall be notified to the DSB and the relevant Councils and Committees by the Member which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.

5. In the course of consultations in accordance with the provisions of a covered agreement, before resorting to further action under this Understanding, Members should attempt to obtain satisfactory adjustment of the matter.

6. Consultations shall be confidential, and without prejudice to the rights of any Member in any further proceedings.

7. If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the complaining party may request the establishment of a panel. The complaining party may request a panel during the 60-day period if the consulting parties jointly consider that consultations have failed to settle the dispute.

8. In cases of urgency, including those which concern perishable goods, Members shall enter into consultations within a period of no more than 10 days after the date of receipt of the request. If the consultations have failed to settle the dispute within a period of 20 days after the date of receipt of the request, the complaining party may request the establishment of a panel.

9. In cases of urgency, including those which concern perishable goods, the parties to the dispute, panels and the Appellate Body shall make every effort to accelerate the proceedings to the greatest extent possible.

10. During consultations Members should give special attention to the particular problems and interests of developing country Members.

11. Whenever a Member other than the consulting Members considers that it has a substantial trade interest in consultations being held pursuant to paragraph 1 of Article XXII of GATT 1994, paragraph 1 of Article XXII of GATS, or the corresponding provisions in other covered agreements⁴, such Member may notify the consulting Members and the DSB, within 10 days after the date of the circulation of the request for consultations under said Article, of its desire to be joined in the consultations. Such Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded. In that event they shall so inform the DSB. If the request to be joined in the consultations is not accepted, the applicant Member shall be free to request consultations under paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATT 1994, paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATS, or the corresponding provisions in other covered agreements.

⁴The corresponding consultation provisions in the covered agreements are listed hereunder: Agreement on Agriculture, Article 19; Agreement on the Application of Sanitary and Phytosanitary Measures, paragraph 1 of Article 11; Agreement on Textiles and Clothing, paragraph 4 of Article 8; Agreement on Technical Barriers to Trade, paragraph 1 of Article 14; Agreement on Trade-Related Investment Measures, Article 8; Agreement on Implementation of Article VI of GATT 1994, paragraph 2 of Article 17; Agreement on Implementation of Article VII of GATT 1994, paragraph 2 of Article 19; Agreement on Preshipment Inspection, Article 7; Agreement on Rules of Origin, Article 7; Agreement on Import Licensing Procedures, Article 6; Agreement on Subsidies and Countervailing Measures, Article 30; Agreement on Safeguards, Article 14; Agreement on Trade-Related Aspects of Intellectual Property Rights, Article 64.1; and any corresponding consultation provisions in Plurilateral Trade Agreements as determined by the competent bodies of each Agreement and as notified to the DSB

Article 5

Good Offices, Conciliation and Mediation

1. Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties to the dispute so agree.
2. Proceedings involving good offices, conciliation and mediation, and in particular positions taken by the parties to the dispute during these proceedings, shall be confidential, and without prejudice to the rights of either party in any further proceedings under these procedures.
3. Good offices, conciliation or mediation may be requested at any time by any party to a dispute. They may begin at any time and be terminated at any time. Once procedures for good offices, conciliation or mediation are terminated, a complaining party may then proceed with a request for the establishment of a panel.
4. When good offices, conciliation or mediation are entered into within 60 days after the date of receipt of a request for consultations, the complaining party must allow a period of 60 days after the date of receipt of the request for consultations before requesting the establishment of a panel. The complaining party may request the establishment of a panel during the 60-day period if the parties to the dispute jointly consider that the good offices, conciliation or mediation process has failed to settle the dispute.
5. If the parties to a dispute agree, procedures for good offices, conciliation or mediation may continue while the panel process proceeds.
6. The Director-General may, acting in an *ex officio* capacity, offer good offices, conciliation or mediation with the view to assisting Members to settle a dispute.

Article 6

Establishment of Panels

1. If the complaining party so requests, a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel.⁵
2. The request for the establishment of a panel shall be made in writing. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly. In case the applicant requests the establishment of a panel with other than standard terms of reference, the written request shall include the proposed text of special terms of reference.

Article 7

Terms of Reference of Panels

1. Panels shall have the following terms of reference unless the parties to the dispute agree otherwise within 20 days from the establishment of the panel:

⁵If the complaining party so requests, a meeting of the DSB shall be convened for this purpose within 15 days of the request, provided that at least 10 days' advance notice of the meeting is given.

"To examine, in the light of the relevant provisions in (name of the covered agreement(s) cited by the parties to the dispute), the matter referred to the DSB by (name of party) in document ... and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in that/those agreement(s)."

2. Panels shall address the relevant provisions in any covered agreement or agreements cited by the parties to the dispute.
3. In establishing a panel, the DSB may authorize its Chairman to draw up the terms of reference of the panel in consultation with the parties to the dispute, subject to the provisions of paragraph 1. The terms of reference thus drawn up shall be circulated to all Members. If other than standard terms of reference are agreed upon, any Member may raise any point relating thereto in the DSB.

Article 8

Composition of Panels

1. Panels shall be composed of well-qualified governmental and/or non-governmental individuals, including persons who have served on or presented a case to a panel, served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee of any covered agreement or its predecessor agreement, or in the Secretariat, taught or published on international trade law or policy, or served as a senior trade policy official of a Member.
2. Panel members should be selected with a view to ensuring the independence of the members, a sufficiently diverse background and a wide spectrum of experience.
3. Citizens of Members whose governments⁶ are parties to the dispute or third parties as defined in paragraph 2 of Article 10 shall not serve on a panel concerned with that dispute, unless the parties to the dispute agree otherwise.
4. To assist in the selection of panelists, the Secretariat shall maintain an indicative list of governmental and non-governmental individuals possessing the qualifications outlined in paragraph 1, from which panelists may be drawn as appropriate. That list shall include the roster of non-governmental panelists established on 30 November 1984 (BISD 31S/9), and other rosters and indicative lists established under any of the covered agreements, and shall retain the names of persons on those rosters and indicative lists at the time of entry into force of the WTO Agreement. Members may periodically suggest names of governmental and non-governmental individuals for inclusion on the indicative list, providing relevant information on their knowledge of international trade and of the sectors or subject matter of the covered agreements, and those names shall be added to the list upon approval by the DSB. For each of the individuals on the list, the list shall indicate specific areas of experience or expertise of the individuals in the sectors or subject matter of the covered agreements.
5. Panels shall be composed of three panelists unless the parties to the dispute agree, within 10 days from the establishment of the panel, to a panel composed of five panelists. Members shall be informed promptly of the composition of the panel.
6. The Secretariat shall propose nominations for the panel to the parties to the dispute. The parties to the dispute shall not oppose nominations except for compelling reasons.
7. If there is no agreement on the panelists within 20 days after the date of the establishment of a panel, at the request of either party, the Director-General, in consultation with the Chairman of the DSB and the Chairman of the relevant Council or Committee, shall determine the composition of the

panel by appointing the panelists whom the Director-General considers most appropriate in accordance with any relevant special or additional rules or procedures of the covered agreement or covered agreements which are at issue in the dispute, after consulting with the parties to the dispute. The Chairman of the DSB shall inform the Members of the composition of the panel thus formed no later than 10 days after the date the Chairman receives such a request.

8. Members shall undertake, as a general rule, to permit their officials to serve as panelists.

9. Panelists shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Members shall therefore not give them instructions nor seek to influence them as individuals with regard to matters before a panel.

10. When a dispute is between a developing country Member and a developed country Member the panel shall, if the developing country Member so requests, include at least one panelist from a developing country Member.

11. Panelists' expenses, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

Article 9

Procedures for Multiple Complainants

1. Where more than one Member requests the establishment of a panel related to the same matter, a single panel may be established to examine these complaints taking into account the rights of all Members concerned. A single panel should be established to examine such complaints whenever feasible.

2. The single panel shall organize its examination and present its findings to the DSB in such a manner that the rights which the parties to the dispute would have enjoyed had separate panels examined the complaints are in no way impaired. If one of the parties to the dispute so requests, the panel shall submit separate reports on the dispute concerned. The written submissions by each of the complainants shall be made available to the other complainants, and each complainant shall have the right to be present when any one of the other complainants presents its views to the panel.

3. If more than one panel is established to examine the complaints related to the same matter, to the greatest extent possible the same persons shall serve as panelists on each of the separate panels and the timetable for the panel process in such disputes shall be harmonized.

Article 10

Third Parties

1. The interests of the parties to a dispute and those of other Members under a covered agreement at issue in the dispute shall be fully taken into account during the panel process.

2. Any Member having a substantial interest in a matter before a panel and having notified its interest to the DSB (referred to in this Understanding as a "third party") shall have an opportunity to be heard by the panel and to make written submissions to the panel. These submissions shall also be given to the parties to the dispute and shall be reflected in the panel report.

3. Third parties shall receive the submissions of the parties to the dispute to the first meeting of the panel.

4. If a third party considers that a measure already the subject of a panel proceeding nullifies or impairs benefits accruing to it under any covered agreement, that Member may have recourse to normal dispute settlement procedures under this Understanding. Such a dispute shall be referred to the original panel wherever possible.

Article 11

Function of Panels

The function of panels is to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. Panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

Article 12

Panel Procedures

1. Panels shall follow the Working Procedures in Appendix 3 unless the panel decides otherwise after consulting the parties to the dispute.
2. Panel procedures should provide sufficient flexibility so as to ensure high-quality panel reports, while not unduly delaying the panel process.
3. After consulting the parties to the dispute, the panelists shall, as soon as practicable and whenever possible within one week after the composition and terms of reference of the panel have been agreed upon, fix the timetable for the panel process, taking into account the provisions of paragraph 9 of Article 4, if relevant.
4. In determining the timetable for the panel process, the panel shall provide sufficient time for the parties to the dispute to prepare their submissions.
5. Panels should set precise deadlines for written submissions by the parties and the parties should respect those deadlines.
6. Each party to the dispute shall deposit its written submissions with the Secretariat for immediate transmission to the panel and to the other party or parties to the dispute. The complaining party shall submit its first submission in advance of the responding party's first submission unless the panel decides, in fixing the timetable referred to in paragraph 3 and after consultations with the parties to the dispute, that the parties should submit their first submissions simultaneously. When there are sequential arrangements for the deposit of first submissions, the panel shall establish a firm time-period for receipt of the responding party's submission. Any subsequent written submissions shall be submitted simultaneously.
7. Where the parties to the dispute have failed to develop a mutually satisfactory solution, the panel shall submit its findings in the form of a written report to the DSB. In such cases, the report of a panel shall set out the findings of fact, the applicability of relevant provisions and the basic rationale behind any findings and recommendations that it makes. Where a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached.

8. In order to make the procedures more efficient, the period in which the panel shall conduct its examination, from the date that the composition and terms of reference of the panel have been agreed upon until the date the final report is issued to the parties to the dispute, shall, as a general rule, not exceed six months. In cases of urgency, including those relating to perishable goods, the panel shall aim to issue its report to the parties to the dispute within three months.

9. When the panel considers that it cannot issue its report within six months, or within three months in cases of urgency, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will issue its report. In no case should the period from the establishment of the panel to the circulation of the report to the Members exceed nine months.

10. In the context of consultations involving a measure taken by a developing country Member, the parties may agree to extend the periods established in paragraphs 7 and 8 of Article 4. If, after the relevant period has elapsed, the consulting parties cannot agree that the consultations have concluded, the Chairman of the DSB shall decide, after consultation with the parties, whether to extend the relevant period and, if so, for how long. In addition, in examining a complaint against a developing country Member, the panel shall accord sufficient time for the developing country Member to prepare and present its argumentation. The provisions of paragraph 1 of Article 20 and paragraph 4 of Article 21 are not affected by any action pursuant to this paragraph.

11. Where one or more of the parties is a developing country Member, the panel's report shall explicitly indicate the form in which account has been taken of relevant provisions on differential and more-favourable treatment for developing country Members that form part of the covered agreements which have been raised by the developing country Member in the course of the dispute settlement procedures.

12. The panel may suspend its work at any time at the request of the complaining party for a period not to exceed 12 months. In the event of such a suspension, the time-frames set out in paragraphs 8 and 9 of this Article, paragraph 1 of Article 20, and paragraph 4 of Article 21 shall be extended by the amount of time that the work was suspended. If the work of the panel has been suspended for more than 12 months, the authority for establishment of the panel shall lapse.

Article 13

Right to Seek Information

1. Each panel shall have the right to seek information and technical advice from any individual or body which it deems appropriate. However, before a panel seeks such information or advice from any individual or body within the jurisdiction of a Member it shall inform the authorities of that Member. A Member should respond promptly and fully to any request by a panel for such information as the panel considers necessary and appropriate. Confidential information which is provided shall not be revealed without formal authorization from the individual, body, or authorities of the Member providing the information.

2. Panels may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter. With respect to a factual issue concerning a scientific or other technical matter raised by a party to a dispute, a panel may request an advisory report in writing from an expert review group. Rules for the establishment of such a group and its procedures are set forth in Appendix 4.

*Article 14**Confidentiality*

1. Panel deliberations shall be confidential.
2. The reports of panels shall be drafted without the presence of the parties to the dispute in the light of the information provided and the statements made.
3. Opinions expressed in the panel report by individual panelists shall be anonymous.

*Article 15**Interim Review Stage*

1. Following the consideration of rebuttal submissions and oral arguments, the panel shall issue the descriptive (factual and argument) sections of its draft report to the parties to the dispute. Within a period of time set by the panel, the parties shall submit their comments in writing.
2. Following the expiration of the set period of time for receipt of comments from the parties to the dispute, the panel shall issue an interim report to the parties, including both the descriptive sections and the panel's findings and conclusions. Within a period of time set by the panel, a party may submit a written request for the panel to review precise aspects of the interim report prior to circulation of the final report to the Members. At the request of a party, the panel shall hold a further meeting with the parties on the issues identified in the written comments. If no comments are received from any party within the comment period, the interim report shall be considered the final panel report and circulated promptly to the Members.
3. The findings of the final panel report shall include a discussion of the arguments made at the interim review stage. The interim review stage shall be conducted within the time-period set out in paragraph 8 of Article 12.

*Article 16**Adoption of Panel Reports*

1. In order to provide sufficient time for the Members to consider panel reports, the reports shall not be considered for adoption by the DSB until 20 days after the date they have been circulated to the Members.
2. Members having objections to a panel report shall give written reasons to explain their objections for circulation at least 10 days prior to the DSB meeting at which the panel report will be considered.
3. The parties to a dispute shall have the right to participate fully in the consideration of the panel report by the DSB, and their views shall be fully recorded.
4. Within 60 days after the date of circulation of a panel report to the Members, the report shall be adopted at a DSB meeting⁷ unless a party to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report. If a party has notified its decision to appeal, the report by the panel shall not be considered for adoption by the DSB until after completion of the appeal. This adoption procedure is without prejudice to the right of Members to express their views on a panel report.

⁷If a meeting of the DSB is not scheduled within this period at a time that enables the requirements of paragraphs 1 and 4 of Article 16 to be met, a meeting of the DSB shall be held for this purpose.

*Article 17**Appellate Review**Standing Appellate Body*

1. A standing Appellate Body shall be established by the DSB. The Appellate Body shall hear appeals from panel cases. It shall be composed of seven persons, three of whom shall serve on any one case. Persons serving on the Appellate Body shall serve in rotation. Such rotation shall be determined in the working procedures of the Appellate Body.

2. The DSB shall appoint persons to serve on the Appellate Body for a four-year term, and each person may be reappointed once. However, the terms of three of the seven persons appointed immediately after the entry into force of the WTO Agreement shall expire at the end of two years, to be determined by lot. Vacancies shall be filled as they arise. A person appointed to replace a person whose term of office has not expired shall hold office for the remainder of the predecessor's term.

3. The Appellate Body shall comprise persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally. They shall be unaffiliated with any government. The Appellate Body membership shall be broadly representative of membership in the WTO. All persons serving on the Appellate Body shall be available at all times and on short notice, and shall stay abreast of dispute settlement activities and other relevant activities of the WTO. They shall not participate in the consideration of any disputes that would create a direct or indirect conflict of interest.

4. Only parties to the dispute, not third parties, may appeal a panel report. Third parties which have notified the DSB of a substantial interest in the matter pursuant to paragraph 2 of Article 10 may make written submissions to, and be given an opportunity to be heard by, the Appellate Body.

5. As a general rule, the proceedings shall not exceed 60 days from the date a party to the dispute formally notifies its decision to appeal to the date the Appellate Body circulates its report. In fixing its timetable the Appellate Body shall take into account the provisions of paragraph 9 of Article 4, if relevant. When the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 90 days.

6. An appeal shall be limited to issues of law covered in the panel report and legal interpretations developed by the panel.

7. The Appellate Body shall be provided with appropriate administrative and legal support as it requires.

8. The expenses of persons serving on the Appellate Body, including travel and subsistence allowance, shall be met from the WTO budget in accordance with criteria to be adopted by the General Council, based on recommendations of the Committee on Budget, Finance and Administration.

Procedures for Appellate Review

9. Working procedures shall be drawn up by the Appellate Body in consultation with the Chairman of the DSB and the Director-General, and communicated to the Members for their information.

10. The proceedings of the Appellate Body shall be confidential. The reports of the Appellate Body shall be drafted without the presence of the parties to the dispute and in the light of the information provided and the statements made.

11. Opinions expressed in the Appellate Body report by individuals serving on the Appellate Body shall be anonymous.

12. The Appellate Body shall address each of the issues raised in accordance with paragraph 6 during the appellate proceeding.
13. The Appellate Body may uphold, modify or reverse the legal findings and conclusions of the panel.

Adoption of Appellate Body Reports

14. An Appellate Body report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the Appellate Body report within 30 days following its circulation to the Members.⁸ This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report.

Article 18

Communications with the Panel or Appellate Body

1. There shall be no *ex parte* communications with the panel or Appellate Body concerning matters under consideration by the panel or Appellate Body.
2. Written submissions to the panel or the Appellate Body shall be treated as confidential, but shall be made available to the parties to the dispute. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel or the Appellate Body which that Member has designated as confidential. A party to a dispute shall also, upon request of a Member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.

Article 19

Panel and Appellate Body Recommendations

1. Where a panel or the Appellate Body concludes that a measure is inconsistent with a covered agreement, it shall recommend that the Member concerned⁹ bring the measure into conformity with that agreement.¹⁰ In addition to its recommendations, the panel or Appellate Body may suggest ways in which the Member concerned could implement the recommendations.
2. In accordance with paragraph 2 of Article 3, in their findings and recommendations, the panel and Appellate Body cannot add to or diminish the rights and obligations provided in the covered agreements.

Article 20

Time-frame for DSB Decisions

Unless otherwise agreed to by the parties to the dispute, the period from the date of establishment of the panel by the DSB until the date the DSB considers the panel or appellate report for adoption shall as a general rule not exceed nine months where the panel report is not appealed or 12 months

⁸If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

⁹The "Member concerned" is the party to the dispute to which the panel or Appellate Body recommendations are directed.

¹⁰With respect to recommendations in cases not involving a violation of GATT 1994 or any other covered agreement, see Article 26

where the report is appealed. Where either the panel or the Appellate Body has acted, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, to extend the time for providing its report, the additional time taken shall be added to the above periods.

Article 21

Surveillance of Implementation of Recommendations and Rulings

1. Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members.
2. Particular attention should be paid to matters affecting the interests of developing country Members with respect to measures which have been subject to dispute settlement.
3. At a DSB meeting held within 30 days¹¹ after the date of adoption of the panel or Appellate Body report, the Member concerned shall inform the DSB of its intentions in respect of implementation of the recommendations and rulings of the DSB. If it is impracticable to comply immediately with the recommendations and rulings, the Member concerned shall have a reasonable period of time in which to do so. The reasonable period of time shall be:
 - (a) the period of time proposed by the Member concerned, provided that such period is approved by the DSB; or, in the absence of such approval,
 - (b) a period of time mutually agreed by the parties to the dispute within 45 days after the date of adoption of the recommendations and rulings; or, in the absence of such agreement,
 - (c) a period of time determined through binding arbitration within 90 days after the date of adoption of the recommendations and rulings.¹² In such arbitration, a guideline for the arbitrator¹³ should be that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However, that time may be shorter or longer, depending upon the particular circumstances.
4. Except where the panel or the Appellate Body has extended, pursuant to paragraph 9 of Article 12 or paragraph 5 of Article 17, the time of providing its report, the period from the date of establishment of the panel by the DSB until the date of determination of the reasonable period of time shall not exceed 15 months unless the parties to the dispute agree otherwise. Where either the panel or the Appellate Body has acted to extend the time of providing its report, the additional time taken shall be added to the 15-month period; provided that unless the parties to the dispute agree that there are exceptional circumstances, the total time shall not exceed 18 months.
5. Where there is disagreement as to the existence or consistency with a covered agreement of measures taken to comply with the recommendations and rulings such dispute shall be decided through recourse to these dispute settlement procedures, including wherever possible resort to the original panel. The panel shall circulate its report within 90 days after the date of referral of the matter to it. When the panel considers that it cannot provide its report within this time frame, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report.

¹¹If a meeting of the DSB is not scheduled during this period, such a meeting of the DSB shall be held for this purpose.

¹²If the parties cannot agree on an arbitrator within ten days after referring the matter to arbitration, the arbitrator shall be appointed by the Director-General within ten days, after consulting the parties.

¹³The expression "arbitrator" shall be interpreted as referring either to an individual or a group

6. The DSB shall keep under surveillance the implementation of adopted recommendations or rulings. The issue of implementation of the recommendations or rulings may be raised at the DSB by any Member at any time following their adoption. Unless the DSB decides otherwise, the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time pursuant to paragraph 3 and shall remain on the DSB's agenda until the issue is resolved. At least 10 days prior to each such DSB meeting, the Member concerned shall provide the DSB with a status report in writing of its progress in the implementation of the recommendations or rulings.

7. If the matter is one which has been raised by a developing country Member, the DSB shall consider what further action it might take which would be appropriate to the circumstances.

8. If the case is one brought by a developing country Member, in considering what appropriate action might be taken, the DSB shall take into account not only the trade coverage of measures complained of, but also their impact on the economy of developing country Members concerned.

Article 22

Compensation and the Suspension of Concessions

1. Compensation and the suspension of concessions or other obligations are temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time. However, neither compensation nor the suspension of concessions or other obligations is preferred to full implementation of a recommendation to bring a measure into conformity with the covered agreements. Compensation is voluntary and, if granted, shall be consistent with the covered agreements.

2. If the Member concerned fails to bring the measure found to be inconsistent with a covered agreement into compliance therewith or otherwise comply with the recommendations and rulings within the reasonable period of time determined pursuant to paragraph 3 of Article 21, such Member shall, if so requested, and no later than the expiry of the reasonable period of time, enter into negotiations with any party having invoked the dispute settlement procedures, with a view to developing mutually acceptable compensation. If no satisfactory compensation has been agreed within 20 days after the date of expiry of the reasonable period of time, any party having invoked the dispute settlement procedures may request authorization from the DSB to suspend the application to the Member concerned of concessions or other obligations under the covered agreements.

3. In considering what concessions or other obligations to suspend, the complaining party shall apply the following principles and procedures:

- (a) the general principle is that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector(s) as that in which the panel or Appellate Body has found a violation or other nullification or impairment;
- (b) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), it may seek to suspend concessions or other obligations in other sectors under the same agreement;
- (c) if that party considers that it is not practicable or effective to suspend concessions or other obligations with respect to other sectors under the same agreement, and that the circumstances are serious enough, it may seek to suspend concessions or other obligations under another covered agreement;
- (d) in applying the above principles, that party shall take into account:

- (i) the trade in the sector or under the agreement under which the panel or Appellate Body has found a violation or other nullification or impairment, and the importance of such trade to that party;
 - (ii) the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations;
- (e) if that party decides to request authorization to suspend concessions or other obligations pursuant to subparagraphs (b) or (c), it shall state the reasons therefor in its request. At the same time as the request is forwarded to the DSB, it also shall be forwarded to the relevant Councils and also, in the case of a request pursuant to subparagraph (b), the relevant sectoral bodies;
- (f) for purposes of this paragraph, "sector" means:
- (i) with respect to goods, all goods;
 - (ii) with respect to services, a principal sector as identified in the current "Services Sectoral Classification List" which identifies such sectors;¹⁴
 - (iii) with respect to trade-related intellectual property rights, each of the categories of intellectual property rights covered in Section 1, or Section 2, or Section 3, or Section 4, or Section 5, or Section 6, or Section 7 of Part II, or the obligations under Part III, or Part IV of the Agreement on TRIPS;
- (g) for purposes of this paragraph, "agreement" means:
- (i) with respect to goods, the agreements listed in Annex IA of the WTO Agreement, taken as a whole as well as the Plurilateral Trade Agreements in so far as the relevant parties to the dispute are parties to these agreements;
 - (ii) with respect to services, the GATS;
 - (iii) with respect to intellectual property rights, the Agreement on TRIPS.

4. The level of the suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of the nullification or impairment.

5. The DSB shall not authorize suspension of concessions or other obligations if a covered agreement prohibits such suspension.

6. When the situation described in paragraph 2 occurs, the DSB, upon request, shall grant authorization to suspend concessions or other obligations within 30 days of the expiry of the reasonable period of time unless the DSB decides by consensus to reject the request. However, if the Member concerned objects to the level of suspension proposed, or claims that the principles and procedures set forth in paragraph 3 have not been followed where a complaining party has requested authorization to suspend concessions or other obligations pursuant to paragraph 3(b) or (c), the matter shall be referred to arbitration. Such arbitration shall be carried out by the original panel, if members are available, or by an arbitrator¹⁵ appointed by the Director-General and shall be completed within 60 days after the date of expiry of the reasonable period of time. Concessions or other obligations shall not be suspended during the course of the arbitration.

7. The arbitrator¹⁶ acting pursuant to paragraph 6 shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment. The arbitrator may also determine if the proposed suspension

¹⁴The list in document MTN.GNS/W/120 identifies eleven sectors.

of concessions or other obligations is allowed under the covered agreement. However, if the matter referred to arbitration includes a claim that the principles and procedures set forth in paragraph 3 have not been followed, the arbitrator shall examine that claim. In the event the arbitrator determines that those principles and procedures have not been followed, the complaining party shall apply them consistent with paragraph 3. The parties shall accept the arbitrator's decision as final and the parties concerned shall not seek a second arbitration. The DSB shall be informed promptly of the decision of the arbitrator and shall upon request, grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSB decides by consensus to reject the request.

8. The suspension of concessions or other obligations shall be temporary and shall only be applied until such time as the measure found to be inconsistent with a covered agreement has been removed, or the Member that must implement recommendations or rulings provides a solution to the nullification or impairment of benefits, or a mutually satisfactory solution is reached. In accordance with paragraph 6 of Article 21, the DSB shall continue to keep under surveillance the implementation of adopted recommendations or rulings, including those cases where compensation has been provided or concessions or other obligations have been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented.

9. The dispute settlement provisions of the covered agreements may be invoked in respect of measures affecting their observance taken by regional or local governments or authorities within the territory of a Member. When the DSB has ruled that a provision of a covered agreement has not been observed, the responsible Member shall take such reasonable measures as may be available to it to ensure its observance. The provisions of the covered agreements and this Understanding relating to compensation and suspension of concessions or other obligations apply in cases where it has not been possible to secure such observance.¹⁷

Article 23

Strengthening of the Multilateral System

1. When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding.

2. In such cases, Members shall

- (a) not make a determination to the effect that a violation has occurred, that benefits have been nullified or impaired or that the attainment of any objective of the covered agreements has been impeded, except through recourse to dispute settlement in accordance with the rules and procedures of this Understanding, and shall make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under this Understanding;
- (b) follow the procedures set forth in Article 21 to determine the reasonable period of time for the Member concerned to implement the recommendations and rulings; and

¹⁵The expression "arbitrator" shall be interpreted as referring either to an individual or a group.

¹⁶The expression "arbitrator" shall be interpreted as referring either to an individual or a group or to the members of the original panel when serving in the capacity of arbitrator.

¹⁷Where the provisions of any covered agreement concerning measures taken by regional or local governments or authorities within the territory of a Member contain provisions different from the provisions of this paragraph, the provisions of such covered agreement shall prevail

- (c) follow the procedures set forth in Article 22 to determine the level of suspension of concessions or other obligations and obtain DSB authorization in accordance with those procedures before suspending concessions or other obligations under the covered agreements in response to the failure of the Member concerned to implement the recommendations and rulings within that reasonable period of time.

Article 24

Special Procedures Involving Least-Developed Country Members

1. At all stages of the determination of the causes of a dispute and of dispute settlement procedures involving a least-developed country Member, particular consideration shall be given to the special situation of least-developed country Members. In this regard, Members shall exercise due restraint in raising matters under these procedures involving a least-developed country Member. If nullification or impairment is found to result from a measure taken by a least-developed country Member, complaining parties shall exercise due restraint in asking for compensation or seeking authorization to suspend the application of concessions or other obligations pursuant to these procedures.
2. In dispute settlement cases involving a least-developed country Member, where a satisfactory solution has not been found in the course of consultations the Director-General or the Chairman of the DSB shall, upon request by a least-developed country Member offer their good offices, conciliation and mediation with a view to assisting the parties to settle the dispute, before a request for a panel is made. The Director-General or the Chairman of the DSB, in providing the above assistance, may consult any source which either deems appropriate.

Article 25

Arbitration

1. Expeditious arbitration within the WTO as an alternative means of dispute settlement can facilitate the solution of certain disputes that concern issues that are clearly defined by both parties.
2. Except as otherwise provided in this Understanding, resort to arbitration shall be subject to mutual agreement of the parties which shall agree on the procedures to be followed. Agreements to resort to arbitration shall be notified to all Members sufficiently in advance of the actual commencement of the arbitration process.
3. Other Members may become party to an arbitration proceeding only upon the agreement of the parties which have agreed to have recourse to arbitration. The parties to the proceeding shall agree to abide by the arbitration award. Arbitration awards shall be notified to the DSB and the Council or Committee of any relevant agreement where any Member may raise any point relating thereto.
4. Articles 21 and 22 of this Understanding shall apply *mutatis mutandis* to arbitration awards.

Article 26

1. *Non-Violation Complaints of the Type Described in Paragraph 1(b) of Article XXIII of GATT 1994*

Where the provisions of paragraph 1(b) of Article XXIII of GATT 1994 are applicable to a covered agreement, a panel or the Appellate Body may only make rulings and recommendations where a party to the dispute considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the application by a Member of any measure, whether or not it conflicts

with the provisions of that Agreement. Where and to the extent that such party considers and a panel or the Appellate Body determines that a case concerns a measure that does not conflict with the provisions of a covered agreement to which the provisions of paragraph 1(b) of Article XXIII of GATT 1994 are applicable, the procedures in this Understanding shall apply, subject to the following:

- (a) the complaining party shall present a detailed justification in support of any complaint relating to a measure which does not conflict with the relevant covered agreement;
- (b) where a measure has been found to nullify or impair benefits under, or impede the attainment of objectives, of the relevant covered agreement without violation thereof, there is no obligation to withdraw the measure. However, in such cases, the panel or the Appellate Body shall recommend that the Member concerned make a mutually satisfactory adjustment;
- (c) notwithstanding the provisions of Article 21, the arbitration provided for in paragraph 3 of Article 21, upon request of either party, may include a determination of the level of benefits which have been nullified or impaired, and may also suggest ways and means of reaching a mutually satisfactory adjustment; such suggestions shall not be binding upon the parties to the dispute;
- (d) notwithstanding the provisions of paragraph 1 of Article 22, compensation may be part of a mutually satisfactory adjustment as final settlement of the dispute.

2. *Complaints of the Type Described in Paragraph 1(c) of Article XXIII of GATT 1994*

Where the provisions of paragraph 1(c) of Article XXIII of GATT 1994 are applicable to a covered agreement, a panel may only make rulings and recommendations where a party considers that any benefit accruing to it directly or indirectly under the relevant covered agreement is being nullified or impaired or the attainment of any objective of that Agreement is being impeded as a result of the existence of any situation other than those to which the provisions of paragraphs 1(a) and 1(b) of Article XXIII of GATT 1994 are applicable. Where and to the extent that such party considers and a panel determines that the matter is covered by this paragraph, the procedures of this Understanding shall apply only up to and including the point in the proceedings where the panel report has been circulated to the Members. The dispute settlement rules and procedures contained in the Decision of 12 April 1989 (BISD 36S/61-67) shall apply to consideration for adoption, and surveillance and implementation of recommendations and rulings. The following shall also apply:

- (a) the complaining party shall present a detailed justification in support of any argument made with respect to issues covered under this paragraph;
- (b) in cases involving matters covered by this paragraph, if a panel finds that cases also involve dispute settlement matters other than those covered by this paragraph, the panel shall circulate a report to the DSB addressing any such matters and a separate report on matters falling under this paragraph.

Article 27

Responsibilities of the Secretariat

1. The Secretariat shall have the responsibility of assisting panels, especially on the legal, historical and procedural aspects of the matters dealt with, and of providing secretarial and technical support.
2. While the Secretariat assists Members in respect of dispute settlement at their request, there may also be a need to provide additional legal advice and assistance in respect of dispute settlement to developing country Members. To this end, the Secretariat shall make available a qualified legal expert from the WTO technical cooperation services to any developing country Member which so

requests. This expert shall assist the developing country Member in a manner ensuring the continued impartiality of the Secretariat.

3. The Secretariat shall conduct special training courses for interested Members concerning these dispute settlement procedures and practices so as to enable Members' experts to be better informed in this regard.

APPENDIX 1

AGREEMENTS COVERED BY THE UNDERSTANDING

- (A) Agreement Establishing the World Trade Organization
- (B) Multilateral Trade Agreements
- Annex 1A: Multilateral Agreements on Trade in Goods
 Annex 1B: General Agreement on Trade in Services
 Annex 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights
- Annex 2: Understanding on Rules and Procedures Governing the Settlement of Disputes
- (C) Plurilateral Trade Agreements
- Annex 4: Agreement on Trade in Civil Aircraft
 Agreement on Government Procurement
 International Dairy Agreement
 International Bovine Meat Agreement

The applicability of this Understanding to the Plurilateral Trade Agreements shall be subject to the adoption of a decision by the parties to each agreement setting out the terms for the application of the Understanding to the individual agreement, including any special or additional rules or procedures for inclusion in Appendix 2, as notified to the DSB.

APPENDIX 2

SPECIAL OR ADDITIONAL RULES AND PROCEDURES CONTAINED IN THE COVERED AGREEMENTS

<i>Agreement</i>	<i>Rules and Procedures</i>
Agreement on the Application of Sanitary and Phytosanitary Measures	11.2
Agreement on Textiles and Clothing	2.14, 2.21, 4.4, 5.2, 5.4, 5.6, 6.9, 6.10, 6.11, 8.1 through 8.12
Agreement on Technical Barriers to Trade	14.2 through 14.4, Annex 2
Agreement on Implementation of Article VI of GATT 1994	17.4 through 17.7

Agreement on Implementation of Article VII of GATT 1994	19.3 through 19.5, Annex II.2(f), 3, 9, 21
Agreement on Subsidies and Countervailing Measures	4.2 through 4.12, 6.6, 7.2 through 7.10, 8.5, footnote 35, 24.4, 27.7, Annex V
General Agreement on Trade in Services	XXII:3, XXIII:3
Annex on Financial Services	4
Annex on Air Transport Services	4
Decision on Certain Dispute Settlement Procedures for the GATS	1 through 5

The list of rules and procedures in this Appendix includes provisions where only a part of the provision may be relevant in this context.

Any special or additional rules or procedures in the Plurilateral Trade Agreements as determined by the competent bodies of each agreement and as notified to the DSB.

APPENDIX 3

WORKING PROCEDURES

1. In its proceedings the panel shall follow the relevant provisions of this Understanding. In addition, the following working procedures shall apply.
2. The panel shall meet in closed session. The parties to the dispute, and interested parties, shall be present at the meetings only when invited by the panel to appear before it.
3. The deliberations of the panel and the documents submitted to it shall be kept confidential. Nothing in this Understanding shall preclude a party to a dispute from disclosing statements of its own positions to the public. Members shall treat as confidential information submitted by another Member to the panel which that Member has designated as confidential. Where a party to a dispute submits a confidential version of its written submissions to the panel, it shall also, upon request of a Member, provide a non-confidential summary of the information contained in its submissions that could be disclosed to the public.
4. Before the first substantive meeting of the panel with the parties, the parties to the dispute shall transmit to the panel written submissions in which they present the facts of the case and their arguments.
5. At its first substantive meeting with the parties, the panel shall ask the party which has brought the complaint to present its case. Subsequently, and still at the same meeting, the party against which the complaint has been brought shall be asked to present its point of view.
6. All third parties which have notified their interest in the dispute to the DSB shall be invited in writing to present their views during a session of the first substantive meeting of the panel set aside for that purpose. All such third parties may be present during the entirety of this session.
7. Formal rebuttals shall be made at a second substantive meeting of the panel. The party complained against shall have the right to take the floor first to be followed by the complaining party. The parties shall submit, prior to that meeting, written rebuttals to the panel.

8. The panel may at any time put questions to the parties and ask them for explanations either in the course of a meeting with the parties or in writing.

9. The parties to the dispute and any third party invited to present its views in accordance with Article 10 shall make available to the panel a written version of their oral statements.

10. In the interest of full transparency, the presentations, rebuttals and statements referred to in paragraphs 5 to 9 shall be made in the presence of the parties. Moreover, each party's written submissions, including any comments on the descriptive part of the report and responses to questions put by the panel, shall be made available to the other party or parties.

11. Any additional procedures specific to the panel.

12. Proposed timetable for panel work:

(a)	Receipt of first written submissions of the parties:		
	(1) complaining Party:	_____	3-6 weeks
	(2) Party complained against:	_____	2-3 weeks
(b)	Date, time and place of first substantive meeting with the parties; third party session:	_____	1-2 weeks
(c)	Receipt of written rebuttals of the parties:	_____	2-3 weeks
(d)	Date, time and place of second substantive meeting with the parties:	_____	1-2 weeks
(e)	Issuance of descriptive part of the report to the parties:	_____	2-4 weeks
(f)	Receipt of comments by the parties on the descriptive part of the report:	_____	2 weeks
(g)	Issuance of the interim report, including the findings and conclusions, to the parties:	_____	2-4 weeks
(h)	Deadline for party to request review of part(s) of report:	_____	1 week
(i)	Period of review by panel, including possible additional meeting with parties:	_____	2 weeks
(j)	Issuance of final report to parties to dispute:	_____	2 weeks
(k)	Circulation of the final report to the Members:	_____	3 weeks

The above calendar may be changed in the light of unforeseen developments. Additional meetings with the parties shall be scheduled if required.

APPENDIX 4

EXPERT REVIEW GROUPS

The following rules and procedures shall apply to expert review groups established in accordance with the provisions of paragraph 2 of Article 13.

1. Expert review groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.
2. Participation in expert review groups shall be restricted to persons of professional standing and experience in the field in question.
3. Citizens of parties to the dispute shall not serve on an expert review group without the joint agreement of the parties to the dispute, except in exceptional circumstances when the panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise. Government officials of parties to the dispute shall not serve on an expert review group. Members of expert review groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before an expert review group.
4. Expert review groups may consult and seek information and technical advice from any source they deem appropriate. Before an expert review group seeks such information or advice from a source within the jurisdiction of a Member, it shall inform the government of that Member. Any Member shall respond promptly and fully to any request by an expert review group for such information as the expert review group considers necessary and appropriate.
5. The parties to a dispute shall have access to all relevant information provided to an expert review group, unless it is of a confidential nature. Confidential information provided to the expert review group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the expert review group but release of such information by the expert review group is not authorized, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.
6. The expert review group shall submit a draft report to the parties to the dispute with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be issued to the parties to the dispute when it is submitted to the panel. The final report of the expert review group shall be advisory only.

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ANNEX V

RELEVANT ARTICLES OF THE EC TREATY

95-96

RELEVANT ARTICLES OF THE EC TREATY**Article 113**

1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of harmonisation of liberalisation, export policy, and measures to protect trade such as those taken in the event of dumping or subsidies
2. The Commission shall submit proposals to the Council for implementing the common commercial policy.
3. Where agreements with one or more states or international organisations need to be negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in its task and within the framework of such directives as the Council may issue to it.

The relevant dispositions of Article 228 apply.

4. In exercise of powers conferred upon it by this Article, the Council shall decide by qualified majority.

Article 116 (Repealed by the Treaty on European Union)

From the end of the transitional period onwards, Members States shall, in respect of all matters of particular interest to the common market, proceed within the framework of international organisations of an economic character only by common action. To this end the Commission shall submit to the Council, which shall act by qualified majority, proposals concerning the scope and implementation of such common action.

During the transitional period, Members shall consult each other for the purpose of concerting the action they take and adopting as a far as possible a uniform attitude.

Article 228

1. Where this Treaty provides for the conclusion of agreements between the Community and one or more States or international organisations, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Commission shall conduct these negotiations in consultation with special committees appointed by the Council to assist it in this task and within the framework of such directives as the Council may issue to it.

In exercising the powers conferred upon it by this paragraph, the Council shall act by qualified majority, except in the cases provided for in the second sentence of paragraph 2, for which it shall act unanimously.

2. Subject to the powers invested in the Commission in this field, the agreements shall be concluded by the Council, acting by a qualified majority on a proposal from the Commission.

The Council shall act unanimously when the agreement covers a field for which unanimity is required for the adoption of internal rules, and for the agreements referred to in Article 238.

3. The Council shall conclude agreements after consulting the European Parliament, except for the agreements referred to in Article 113(3), including cases where the agreement covers a field for which the procedure referred to in Article 189b or that referred to in Article 189c is required for the adoption of internal rules. The European Parliament shall deliver its opinion within a time-limit which the Council may lay down according to the urgency of the matter. In the absence of an opinion within that time-limit, the Council may act.

By way of derogation from the previous paragraph, agreements referred to in Article 238, other agreements establishing a specific institutional framework by organising cooperation procedures, agreements having important budgetary implications for the Community and agreements entailing amendment of an act adopted under the procedure referred to in Article 189b shall be conducted after the assent of the European Parliament has been obtained.

The Council and the European Commission may, in an urgent situation, agree upon a time-limit for the assent.

4. When concluding an agreement, the Council may, by way of derogations from paragraph 2, authorise the Commission to approve modifications on behalf of the Community where the agreement provides for them to be adopted by a simplified procedure or by a body set up by the agreement; it may attach specific conditions to such authorisation.

5. When the Council envisages concluding an agreement which calls for amendments to this Treaty, the amendments must first be adopted in accordance with the procedure laid down in Article N of the Treaty on European Union.

6. The Council, the Commission or a Member State may obtain the opinion of the Court of Justice as to whether an agreement envisaged is compatible with the provisions of this Treaty. Where the opinion of the Court is adverse, the agreement may enter into force only in accordance with Article N of the Treaty on European Union.

7. Agreements concluded under the conditions set out in this Article shall be binding on the institutions of the Community and on Member States.

Article 229

It shall be for the Commission to ensure the maintenance of all appropriate relations with the organs of the United Nations, of its specialised agencies and of the General Agreement on Tariffs and Trade.

The Commission shall also maintain such relations as are appropriate with all international organisations.

Article 238

The Community may conclude with one or more States or international organisations agreements establishing an association involving reciprocal rights and obligations, common action and special procedures.

ANNEX VI

THE SOLEMN DECLARATION ON EUROPEAN UNION OF 19 JUNE 1983

99-100

SOLEMN DECLARATION ON EUROPEAN UNION OF 19 JUNE 1983

Point 2.3.7:

"In addition to the consultations provided for in the treaties with respect to certain international agreements, the Opinion of the European Parliament will be sought before:

- the conclusion of other significant international agreements by the Community,
- the accession of a state to the European Community.

The existing procedures for providing the European Parliament with confidential and unofficial information on progress in negotiations will be extended, taking into account the requirements of urgency, to all significant international agreements concluded by the Communities."

(Bull. EC 6-1983, p.24)

ANNEX VII

THE LUNS AND WESTERTERP PROCEDURES

103-104

THE LUNS AND WESTERTEP PROCEDURES

Luns Procedure

Minutes of the Council 24-25 February 1964, page 26

"A debate may take place in the Parliament before negotiations with a view to the association of a third country with the Community are started. During the negotiations close contacts shall be maintained between the Commission and the appropriate committees of the Parliament. When the negotiations are concluded, but before the agreement is signed, the Council or its representatives shall confidentially and unofficially inform the appropriate committees of the substance of the agreement."

Westertep Procedure

Note of the Council, 16 October 1973

"Further to the Resolutions adopted by the European Parliament on 13 February 1973, fuller participation by the European Parliament in the field of trade agreements could be envisaged along the following lines:

- prior to the opening of negotiations concerning a trade agreement with a third country, and in the light of information supplied by the Council to the appropriate parliamentary committees, a debate could, where appropriate be held in the European Parliament;
- when negotiations are completed, but before signing of the agreement, the President of the Council or his representatives would confidentially and unofficially acquaint the competent committees with the substance of the agreement;
- bearing in mind the interest which the European Parliament attaches to the trade agreements to be concluded by the Community, the Council will inform the Parliament of the content of such agreements after they have been signed but before they have been concluded."

ANNEX VIII**RELEVANT RESOLUTIONS OF THE EUROPEAN PARLIAMENT**

- (1) Resolution of 22 January 1993 on environment and trade, OJ C 42, 15.02.93, p.246
- (2) Resolution of 19 January 1994 on GATT, OJ C 44, 14.02.94, p.102
- (3) Resolution of 9 February 1994 on the introduction of a social clause in the unilateral and multilateral trading system, OJ C 61, 28.02.94, p.89
- (4) Resolution of 24 March 1994 on the outcome of the Uruguay Round of GATT multilateral trade negotiations, OJ C 114, 25.04.94, p.25
- (5) Resolution of 15 December 1994 on the conclusion of the Uruguay Round and the future activities of the WTO, OJ C 18, 23.1.1995, p. 165

1. Environment and trade

RESOLUTION A3-0329/92

Resolution on environment and trade

The European Parliament.

- having regard to the GATT report on Trade and Environment (GATT 1529),
 - having regard to the World Bank Discussion Papers on International Trade and the Environment,
 - having regard to the conclusions of UnCED and Agenda 21 as regards trade and the environment,
 - having regard to its resolution of 13 February 1992 ⁽¹⁾ on EC participation in the United Nations Conference on the Environment and Development (UnCED),
 - having regard to the motion for a resolution by Mr Pimenta and Mr Muntingh on the future of trade and environmental issues (B3-0668/91),
 - having regard to the report of the Committee on External Economic Relations and the opinion of the Committee on the Environment, Public Health and Consumer Protection (A3-0329/92),
- A. whereas the destruction of the environment involves irreversible processes and the environment is therefore different from other concerns, such as social and human rights, in its impacts on trade,
- B. whereas the link described in the Brundtland report between poverty and the destruction of the environment indicates the need for account to be taken of minimum social standards in multinational agreements in order to make trade compatible with the environment,
- C. whereas there is an urgent need to increase understanding of the relationship between trade and the environment, and to avoid the manipulation of this relationship by protectionists acting against the interests of developing countries,
- D. whereas the failure to place the relationship between trade and the environment on the agenda of the Uruguay Round at Punta del Este can, in retrospect, be seen as a major error

⁽¹⁾ OJ No C 67 16 3 1992 p 152

- E. whereas the task of integrating environmental concerns into the fabric of the world trade rules can no longer be delayed, and a trade free-for-all without rules would be a disaster for the global environment,
- F. whereas sensible environmental guidelines do not hinder free trade, and trade can help the environment where specialisation uses resources with less waste,
- G. whereas the pioneering work being done in the OECD and other organizations has laid the intellectual foundation for a serious analysis of the economics of environmental protection issues,
- H. whereas Unctad is of doubtful relevance, is understaffed and ill-equipped to seriously consider environmental protection issues,
- I. whereas the Unctad process was important in the establishment of an action-orientated consensus on the environment and trade relationship between North and South, and the Earth Summit failed to achieve such a consensus,
- J. whereas there is an urgent need to ensure practical coherence between environmental conventions such as the Montreal Protocol, the Basel Convention, Cites and the rules and practice of the GATT, and it is vital to continued public support for free trade to avoid a conflict between GATT and these multilateral conventions,
- K. whereas the experience gained from negotiations concerning the tropical timber trade, CFCs, global warming and animal welfare issues is of significance in the adaption of the trading system,
- L. whereas the draft Multilateral Trade Organisation contained in the Dunkel Document does not incorporate the necessary environmental protection provisions
- M. whereas although the relationship explained in the GATT Report between free trade induced wealth and an increase in the proportion of national expenditure on the environment has substance, economic growth alone can not protect the environment for it is also necessary to take into consideration cumulative per capita claims on world resources and sustainability
- N. whereas although examples exist of economic pressures developing in the short term on countries who restructure their economy in a more environmental and sustainable manner, the economic benefits in the long term from the safeguarding of natural resource capital are clear,
- O. whereas failure to address the competitiveness issue will result in the perception that the most environmentally damaging industries and production processes can become 'free riders', whereas the World Bank Discussion Paper estimates that compliance costs rarely exceed 3% and that few actual examples can be found of relocation in search of weaker environmental regimes,
- P. whereas there is an urgent need for the protection of the global common resources, (such as the oceans, the forests, the atmosphere) as their free appropriation is not consistent with sustainable economic practices, their value not being reflected or included in the price of end products,

- Q. whereas more stringent environmental standards can contribute to higher competitiveness thanks to a more efficient use of raw materials and energy,
- R. whereas the GATT practice must take into consideration the necessary internalization of costs following the specific guidelines developed by the OECD in 1972: Polluter-pays-principle, User-pays-principle, the Precautionary principle, and the Principle of prevention,
- S. whereas the application of the principle of sustainability, as developed in the Brundlandt report and agreed in the UN General Assembly in 1987, in several Declarations of the Unced Conference of Rio in 1992 and proposed in the Fifth Action Programme of the European Community, would imply a new structure of world trade because the internalization of external costs and the careful handling of limited natural resources would substantially alter global production structures,
- T. whereas existing GATT rules define the national treatment principle which allows for the restriction of environmentally undesirable products, provided that imports are treated in the same way as national products; whereas it is recognized that this can cause tension in the setting of technical standards,
- U. whereas the treatment of processes that are environmentally undesirable is more difficult because of problems of definition and enforcement, and whereas 'labelling' can only partially solve this problem,
- V. whereas the suspended GATT Panel judgement on the Tuna/Dolphin dispute between the US and Mexico has been widely, if inaccurately, interpreted as threatening existing valuable environmental legislation,
- W. whereas the GATT Panel ruling on the Tuna/Dolphin case underlined the fact that environmental protection is GATT-compatible in the context of a specific multilateral agreement,
- X. whereas the GATT itself is multilateral and for its own credibility it should seek to encourage multilateral agreements,
- Y. whereas the proposed enactment of unilateral measures should be seen by the GATT as an indication that something is wrong and used as a catalyst to create multilateral agreements,
- Z. whereas such multilateral agreements may lead to considerable and continuing financial transfers between contracting parties,
- AA. whereas global awareness of the environment has increased since the original drafting of the GATT rules and the defence of the 'global Commons' requires a more generous re-writing of Articles XXb and XXg,
- AB. whereas Articles XXb and XXg of GATT do not, of themselves, afford adequate protection of natural resources and the environment as such, and need to be interpreted in the light of GATT panel judgements and political processes,
- AC. whereas the GATT until now has not sufficiently recognized the mutual influence of trade and environment and does not have the in-house expertise on the environment to make decisions on environmental matters or judgements based on Articles XXb and XXg, whereas the GATT bases, and will continue to base, its decisions on environmental issues purely on trade considerations unless environment and trade guidelines based on case law are developed in co-operation with environmental experts,

1. Welcomes the reconvening of the GATT Group on Environmental Measures and Trade and their focus on international agreements, and calls upon it to intensify its work after the Earth Summit in order to base international trade on the principle of sustainability, and to invite non-governmental organizations operating in the environmental protection sphere to participate in its deliberations;
2. Calls on the Contracting Parties to expand the initial agenda of the GATT Group on Environmental Matters and International Trade to include an investigation of the full internalization of environmental costs in trade;
3. Calls on the GATT Secretariat to promote actively multilateral agreements amongst Contracting Parties in areas of trade and environment tension and to equip itself with the environmental and financial expertise to manage the integration of such agreements into the practice of GATT;
4. Advocates the recognition of a threshold to be agreed at international level for the establishment of GATT enforceable multilateral environmental agreements, whereby once agreements have been reached by contracting parties responsible for a given percentage of the production or practices concerned they shall be regarded under GATT practice as GATT-compatible;
5. Stresses the need for a final declaration accompanying the conclusion of the Uruguay Round that includes a timetable and plan of action for the integration of environmental concerns in the MTO and further stresses its dissatisfaction with the statutes of the MTO currently being negotiated, and requests the Commission to report immediately to the European Parliament on its attitude to these statutes;
6. Calls on the GATT Contracting Parties, as an integral part of the Uruguay Round negotiations, to agree to an additional recital in the Preamble of the Statutes of the MTO to read as follows 'Recognizing that their trade liberalization endeavours should contribute towards the promotion of sustainable development in a manner which respects the environment';
7. Calls on the GATT Contracting Parties, as an integral part of the Uruguay Round negotiations, to agree to extend the structure of the MTO in the Statutes to incorporate an Environment Council empowered to review all future MTO decisions in the context of their impact on the global environment and to report directly to the General Council before such decisions are finally taken;
8. Calls on the GATT Contracting Parties, as an integral part of the Uruguay Round negotiations to agree to extend the structure of the MTO in the Statutes to establish a Committee on Trade and the Environment which shall have the task of consolidating the work already carried out since the establishment in 1971 of the Group on Environmental Measures and International Trade and to ensure that the implementation of the Uruguay Round is carried out in a way that is fully compatible with the balanced development of the global environment;
9. Calls on the GATT Contracting Parties, as an integral part of the Uruguay Round negotiations, to agree to issue a political declaration expressing their determination that the Uruguay Round will be fully consistent with their global environmental objectives;
10. Calls for a two-year moratorium on all GATT panel judgements concerning the environment, pending the strengthening of GATT articles and practices. This strengthening should include

- (a) the extension of Article XX of GATT to include better 'protection of the environment and the biosphere' and the addition to Article XX of clauses which forbid the parties to the agreement to take action against other parties who observe international conventions and agreements on the protection of the environment.
 - (b) the extension of the consultations provided for in Article XXII of GATT to include environmental protection and natural resources.
 - (c) clarification that in GATT rules environmental dumping is prohibited; calls for it to be made clear that parties to GATT may use non-tariff trade barriers to protect the environment, the landscape and natural resources, provided that they are not used as a pretext for protectionism, and emphasizes in this context the need to help ensure within the framework of development cooperation that the best available technologies can be applied.
11. Calls on the GATT group on environmental measures and trade to elaborate GATT-compatible instruments of environmental policy, taking particularly into consideration economic and fiscal measures;
 12. Calls on the UN, the World Bank, and the IMF to pursue and intensify the work on Environment and International Trade after the Earth Summit in order to implement the principle of sustainability in the field of international trade relations;
 13. Recognizes that, while GATT is the most immediately affected of the Bretton Woods institutions, it will be necessary to review the functioning of all the global institutions in the light of the environmental crisis;
 14. Instructs its President to forward this Resolution to the Commission, the Council and the governments of the Member States and to the GATT Secretariat, Unctad, OECD, UNEP, IMF and the World Bank.
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2. GATT**B3-0081,0082,0083 and 0124/94****Resolution on GATT***The European Parliament,*

- having regard to the Commission statement of 16 December 1993 on the outcome of the GATT negotiations,
 - having regard to its President's statement of 16 December 1993 on the conclusion of the Uruguay Round negotiations¹ and his letter to the Council of 21 December 1993,
 - having regard to the Commission statement of 19 January 1994 on the legal base to be used for the GATT Agreement concluded on behalf of the European Community,
- A. recalling the obligation imposed upon the Heads of State and Government, pursuant to the Solemn Declaration on European Union signed in Stuttgart in 1983,
 - B. recalling the statement by the President of the Commission to Parliament on the 1990 legislative programme, confirming that the European Parliament should be consulted upon and give its assent to international agreements of major importance,
1. Calls on the Commission not to submit the results of the negotiations concluding the Uruguay Round to the Council, on behalf of the European Union, solely pursuant to Article 113 of the EC Treaty, since this legal basis covers only the trade policy sections of the comprehensive agreement;
 2. Points out that it should be consulted pursuant to Article 228(3), second subparagraph, of the EC Treaty, since the GATT Agreement provides for an international agreement with important budgetary implications for the Community and also for the creation of independent institutional structures (World Trade Organization) and will thus involve the modification of internal Community legislation, which must be adopted in accordance with the codecision procedure;
 3. Calls on the Council formally to submit the Agreement to Parliament before the signing of the Final Act scheduled for 15 April 1994 at the Ministerial Conference in Marrakech to enable it to apply the assent procedure before the end of the present parliamentary term;
 4. Demands that the Commission do everything possible to enable Parliament to hold a debate on the contents of the GATT Agreement at its March part-session and then give its assent at the final part-session of its current term;
 5. Calls on the Commission and the Council to take the necessary steps to enable Parliament to take part in the European Union delegation and participate in the Ministerial Conference in Marrakech, as it did in the GATT Ministerial Conference held in Montreal in December 1988 and Brussels in December 1990;
 6. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and the General Secretariat of GATT.

¹ Minutes of that Sitting, Part I, Item 20.

3. SOCIAL CLAUSE IN TRADING SYSTEM**A3-0007/94****Resolution on the introduction of a social clause in the unilateral and multilateral trading system***The European Parliament,*

- having regard to its resolutions of 9 September 1986 (paragraphs 64 and 65)¹, 18 November 1988 (paragraph 77)², 11 October 1990 (paragraph 52)³, 30 September 1993⁴ and 28 October 1993 (paragraph 12)⁵, wishing to guarantee minimum standards with regard to freedom of association, free collective bargaining, working hours, the minimum age for employment, industrial safety and inspection of working conditions,
 - having regard to the International Labour Organization (ILO) conventions as a whole,
 - having regard to the Vienna Declaration and the Action Programme adopted by the World Conference on Human Rights on 25 June 1993,
 - having regard to the motion for a resolution by Mr Suarez Gonzalez on social clauses in the international multilateral trading system (B3-1673/92),
 - having regard to the motion for a resolution by Mr Staes on a ban on imports of goods produced with child labour (B3-1352/93),
 - having regard to Rule 45 of its Rules of Procedure,
 - having regard to the report by the Committee on External Economic Relations and the opinion of the Committee on Social Affairs, Employment and the Working Environment (A3-0007/94),
- A. mindful of the globalization of international economic activity and the resultant far-reaching changes in the international division of labour,
- B. whereas international trade should be a special means of introducing social innovation that would permit greater respect for workers' rights,
- C. whereas those who set GATT up recognized the principles of comparative advantage and so did not become involved in the field of fair working standards,
- D. mindful of the millions of children reduced to slavery throughout the world making goods at derisory prices, in violation of basic human rights,
- E. whereas serious violations of ILO Conventions also occur in the Member States, most of which have accepted and ratified them, particularly with regard to domestic staff and workers employed in numerous clandestine work-places (especially in the textiles industry), where people work under appalling conditions, without social protection and in return for a mere pittance,

¹ OJ C 255, 13.10.1986, p. 69.

² OJ C 326, 19.12.1988, p. 315.

³ OJ C 284, 11.12.1990, p. 152.

⁴ OJ C 279, 18.10.1993, p. 16.

⁵ Minutes of that Sitting, Part II, Item 10.

- F. whereas the Community, which remains one of the most powerful economic and trading blocs in the world, should set an example to both developed and developing countries with regard to respect for labour rights,
- G. mindful of the tens of thousands of prisoners throughout the world who are exploited and even tortured in veritable factories, part of whose output is intended for the West,
- H. mindful of the indispensable role played by the trade unions with regard to respect for workers' rights throughout the world,
- I. mindful of the essential work which the ILO has carried out over the past 75 years, within the limits of its powers, in the field of workers' rights,
- J. whereas the goals of social justice and fair competition can only be achieved on the basis of a code of minimum working standards linked to the agreements governing international trade,
- K. whereas on several occasions in the past Parliament has called for the introduction of a social clause in international trade,
1. Believes that it is vitally important that a number of ILO conventions be observed by all Member States and third countries in all circumstances, particularly the conventions restricting the use of child labour (Nos. 5 and 138), those prohibiting forced labour (Nos. 29 and 105) and those guaranteeing the right to join trade unions and the right to engage in collective bargaining (Nos. 87 and 98);
 2. Considers it essential that a social clause designed to combat child and forced labour and to encourage trade union freedoms and the freedom to engage in collective bargaining on the basis of the ILO conventions mentioned above be introduced in the multilateral and unilateral framework (GSP) of international trade, and that, in doing so, account be taken of the importance of national and regional characteristics and of the diversity of historical, cultural and religious backgrounds;
 3. Considers that the introduction of a social clause in international trade must not become a means of increased protectionism directed against developing countries but that, on the contrary, it should become a factor in the struggle against underdevelopment and violations of human rights;
 4. Expresses the hope that, following negotiations between the two sides of industry, foreign investment by multinational companies will permit not only the transfer of new technologies and management skills but also, and above all, social innovations based on the clause referred to above;
 5. Calls therefore for importing companies and their associated distribution circuits likewise to cease social dumping practices and ensure strict observance of the ILO Conventions referred to in paragraph 1; calls upon the Commission to study corrective measures in this context;
 6. Considers it essential that the introduction of a social clause in multilateral trade regulations is included in the responsibilities of the future World Trade Organization (WTO) and consequently instructs the European Union to ensure that the Declaration of the Ministerial Conference closing the Uruguay Round contains a commitment and specific agreements to achieve this priority objective;
 7. Calls for Article XX(e) of GATT to be changed by introducing a ban on child and forced labour and the right to join trade unions and engage in collective bargaining; accordingly, considers it essential that a code be negotiated between all the Contracting Parties to determine the way in which these principles can be implemented in practice;
 8. Considers it important that such a code should include a clause concerning mandatory consultation within the future World Trade Organization and, until that institution is set up, between the European Union and the countries concerned before measures to deal with a suspected violation of ILO Conventions are considered; regards it as essential, moreover, that the code make provision for an appeals and/or arbitration procedure;
 9. Believes that proper enforcement mechanisms should be established, preferably under the GATT and the WTO, so as to ensure that the social clause is respected by individual companies in all signatory countries; believes that the GATT and the WTO should work in close collaboration with the ILO when panels rule on any conflicts arising from the application of the social clause;

10. Believes that the social partners in all countries will and should have an important role in monitoring and reviewing the application of the social clause and above all in seeing that its provisions are respected and enforced; such a role should include the possibility of making direct complaints to the Commission;
11. Emphasizes the importance of reactivating Article XX(e) of the GATT, particularly with regard to the reinstatement of China in GATT or the future World Trade Organization;
12. Proposes that the ILO, while retaining its independence, be involved in monitoring respect for workers' rights in conjunction with the future World Trade Organization;
13. Hopes that the future World Trade Organization will include an advisory committee, with members from the ILO and the countries concerned, which will have the power to lodge complaints against multinationals or states that flout the conventions enshrined in the social clause;
14. Calls on the Commission to introduce a social incentive clause as a means of combating underdevelopment in the new ten-year arrangement for the Community's Generalized System of Preferences;
15. Calls for a financial instrument to be set up following the 1994 annual GSP renewal to permit the implementation of action programmes to encourage the education of children, literacy and the establishment of medical provisions for children who have suffered as a result of bad working conditions and to provide aid for the reintegration of political prisoners and for the setting up of free trade unions and the encouragement of trade union activities;
16. Insists that the European Union should take the lead in pushing for the inclusion of social clauses in trade agreements and in this context urges that the Commission support the inclusion of a social clause during the renegotiation of the Generalized System of Preferences;
17. Believes that the links between the European Union and the ILO should be strengthened through joint activities such as the pilot IPECL programme (International Programme on Elimination of Child Labour);
18. Calls upon the Commission to consider ways of guaranteeing respect for labour rights and how monitoring could be carried out;
19. Calls on the Commission to make specific proposals to the Council and Parliament before 31 December 1994 based on the principles stated in this resolution;
20. Instructs its President to forward this resolution to the Council, the Commission, the governments of the Member States, the ILO and the GATT Secretariat.

4. GATT negotiations: Uruguay Round

A3-0149/94

Resolution on the outcome of the Uruguay Round of GATT multilateral trade negotiations*The European Parliament,*

- having regard to its resolutions of 11 October 1990¹, 19 November 1992², 17 December 1992³, 15 July 1993⁴ and 30 September 1993⁵ on the state of the multilateral trade negotiations of the GATT Uruguay Round,
- having regard to its resolution of 22 January 1993 on trade and the environment⁶,
- having regard to its resolution of 16 November 1993 on GATT and the crisis in the textile industry⁷,
- having regard to its resolution of 19 January 1994 on the outcome of the multilateral trade negotiations of the GATT Uruguay Round⁸,
- having regard to its resolution of 9 February 1994 on the introduction of social clauses into the multilateral trade system⁹,
- having regard to the results of the Uruguay Round of GATT negotiations, as set out in the GATT Final Act of 15 December 1993,
- having regard to the motion for a resolution by Mr Rossetti on the multilateral trade negotiations of the Uruguay Round (B3-1249/91),
- having regard to the motion for a resolution by Mrs Ferrer on the need to protect the European tanning industry (B3-1397/93),
- having regard to Rule 45 of its Rules of Procedure,
- having regard to the report of the Committee on External Economic Relations and the opinions of the Committee on Foreign Affairs and Security, the Committee on Agriculture, Fisheries and Rural Development and the Committee on Development and Cooperation (A3-0149/94),

¹ OJ C 284, 12.11.1990, p. 152.

² OJ C 337, 21.12.1992, p. 241.

³ OJ C 21, 25.1.1993, p. 165.

⁴ OJ C 255, 20.9.1993, p. 181.

⁵ OJ C 279, 18.10.1993, p. 16.

⁶ OJ C 42, 15.2.1993, p. 246.

⁷ Minutes of that sitting, Part II, item 3.

⁸ Minutes of that sitting, Part II, item 5.

⁹ Minutes of that sitting, part II, item 8.

- A. whereas the GATT contracting parties set out the topics, objectives, institutional structures and timetable for the eighth multilateral round of GATT negotiations in the Punta del Este declaration of September 1986,
- B. whereas the GATT contracting parties undertook a mid-term review of the negotiations at the ministerial conference held in Montreal in December 1988; whereas they did not succeed in concluding the negotiations at the ministerial conference held in Brussels in December 1990 as planned,
- C. whereas the GATT contracting parties have succeeded in reconciling their differences and achieved wide-ranging results in many spheres in the past three years of negotiations,
- D. whereas the Council decided on 15 December 1993 to approve the outcome of the Uruguay Round of negotiations,

The results of the negotiations in general

1. Notes with relief that after more than seven years of intensive negotiations the GATT contracting parties have managed to bring the eighth and hitherto most ambitious multilateral round of GATT negotiations, the failure of which would have had unforeseeable implications for the world economy, to a successful conclusion;
2. Is convinced that the successful conclusion and the implementation of the results of the Uruguay Round will act as a perceptible stimulus to growth and employment at a time when the economy of the Western industrialized countries is in global recession;
3. Notes that the impact of the GATT agreement varies between developing countries and even between ethnic groups, with a possible loss of national revenue in the next few years for the food-importing countries of Africa south of the Sahara and the LDCs; other developing countries, however, for example textile-producing or food-producing countries, will benefit from the GATT agreement and, in general, developing countries will be able to benefit from improved market access for their export products;
4. Expresses its appreciation to the Commission, which conducted the negotiations on behalf of the European Union (EU), for its success throughout the negotiations in effectively defending the sometimes divergent interests of the EU's Member States against the other parties to the negotiations;
5. Welcomes in particular the fact that the conclusion of the Uruguay Round has resulted in the extension of the multilateral trade system to include such important spheres as trade in services, the protection of intellectual property and rules on trade-related investment measures, since the mere lowering of tariffs and non-tariff barriers to trade in goods is proving increasingly inadequate in view of the advancing globalization of the world economy;
6. Is aware that a final judgment on the balance of the overall outcome of the negotiations will not be possible until an in-depth study has been made of the contributions all GATT contracting parties make on tariff reductions and the opening of the service sectors;
7. Notes, however, on the basis of the results of the negotiations currently available, as set out in the Final Act of 15 December 1993, that the negotiating objectives of Punta del Este have by and large been achieved and in some respects even exceeded and that the results conform to the negotiating mandate which the Commission received from the Council before the negotiations began;
8. Regrets however that the pledge given at Punta del Este to conduct an evaluation with a view to ensuring effective application of the promised 'differential and more favourable treatment' for the developing countries before the formal completion of the negotiations has not been fulfilled, and insists that this undertaking still stands;
9. Emphasizes that the outcome as a whole takes due account of the interests both of the EU and its most important trading partners and of the developing countries, which in many spheres have been granted extensive derogations and longer transitional periods for the implementation of the results;
10. Points out that the concessions made by certain partners fall short of their economic potential in the case of tariff reductions and the opening of their service markets;
11. Acknowledges the major efforts made by many developing countries in agreeing to extensive, often unilateral tariff reductions during the negotiations and in committing themselves to these reductions in GATT;

12. Is convinced that the economic development of the developing countries will benefit from the agreed liberalization of trade in agricultural products and in textiles and clothing, for example;

Institutional aspects

13. Welcomes explicitly the establishment of a World Trade Organization (WTO) as a framework encompassing all multi- and plurilateral agreements negotiated in GATT;
14. Is particularly hopeful that more forceful and stringent dispute settlement procedures within the WTO framework, possibly representing the beginnings of international trade jurisdiction and incapable of being blocked by a single GATT member, will make a significant contribution to reducing the number of bilateral trade conflicts;
15. Welcomes the fact that the contracting parties have reached agreement on a reinforced and more complex system for resolving disputes which will make it possible to abandon unilateral commercial defence measures which are not compatible with GATT rules;
16. Welcomes the fact that the EU as such will join its Member States as a WTO contracting party and sees this as strengthening the common commercial policy of the EU for which Article 113 of the EC Treaty provides;
17. Wishes to be informed in good time of the structure, bodies, working methods and decision-making procedures of the WTO;
18. Insists, with a view to democratic control over the policy of the European Union and implementation of the WTO and work in its bodies, on the assent of the European Parliament, as provided for in Article 228(3), second subparagraph, of the EC Treaty;

Individual areas of the negotiations

(a) Tariff reductions

19. Notes with satisfaction that the tariff concessions as a whole will lead to a reduction in tariff barriers to trade which will exceed the 30% target set at Punta del Este;
20. Is disappointed, however, that some industrialized countries, including the USA and Japan, did not agree to a more significant reduction in their top tariff rates, with which they protect themselves in particular against imports of textiles, clothing and leather goods;
21. Acknowledges explicitly the contributions made by many developing countries in agreeing to extensive tariff reductions and their commitment to these reductions in GATT in line with their move away from the concept of import substitution towards the concept of an export-oriented development strategy;

(b) Agricultural trade

22. Appreciates that the EU had to agree to reduce support and protection for its farming sector in order to comply with the Punta del Este negotiating objectives in this sphere, but is convinced that these concessions will jeopardize neither the basic principles nor the fundamental instruments of the common agricultural policy (CAP), which was reformed during the Uruguay Round, as prescribed in the Commission's negotiating mandate;
23. Welcomes the fact that direct income subsidies, one of the main elements of the CAP reform, have been accepted by the GATT contracting parties as complying with GATT and that there is therefore no obligation to reduce them;
24. Calls on the Council and the Commission to ensure, pursuant to the Edinburgh agreements, that direct payments for 'green box' policies continue to be a feature of the budget for the duration of the peace clause;
25. Refers in this context to the importance of the 'peace clause' agreed for nine years, whereby all the contracting parties commit themselves to refraining from taking action against these forms of government subsidies by the GATT dispute settlement procedure;

26. Regards the agreed conversion of all restrictions on market access into equivalent tariff rates (tariffication) and the reduction of these tariffs and of export subsidies by 36% and of subsidized exports by 21% over a period of six years as a contribution to greater economic rationality in agricultural trade;
27. Regards the agreement on substitution products as a binding commitment to restrict imports of these products to the 1990-1992 level;
28. Urges the Commission, should the Uruguay Round agreements impose adjustment burdens on agriculture in the EU in addition to those already arising from the CAP reform, to consider how these burdens can be offset by further aid measures that conform to GATT;
29. Concedes that additional costs will arise for developing countries which are net importers of agricultural products as a result of the expected increase in world market prices and therefore welcomes the assurance of further aids to these countries for the development of their own agricultural sectors;

(c) Textiles and clothing

30. Is convinced that the 20 years of protection afforded by the Multifibre Arrangement have given the European textile and clothing industry enough time to adjust and that it should therefore be able to cope economically with the gradual reintegration of the trade in textiles into GATT by the year 2005;
31. Refers, moreover, to the improved GATT provisions on safeguard clauses in particular and on the protection of intellectual property, which should afford the European industry better protection against unfair foreign competitors and against imitations;
32. Emphasizes that the progressive liberalization of the trade in textiles played a major part in gaining the developing countries' approval of the inclusion of services and the protection of intellectual property in the GATT rules and that they have also undertaken to open their markets significantly to textile and clothing imports from the industrialized countries;
33. Considers, however, that as regards market access the offers of several major suppliers are unsatisfactory; calls on the Commission, therefore, to continue the negotiations with great resolution, seeking a withdrawal of the EU's tariff offer solely for those products for which the main suppliers have not submitted a significant offer;

(d) GATT rules

34. Welcomes the rewording of Article XIX of GATT on safeguard measures, which, by introducing a degree of selectivity vis-a-vis the suppliers mainly responsible for the damage, will permit the waiving of voluntary restraint agreements that do not comply with GATT should there be a sharp rise in imports in the future;
35. Hopes that the rewording of the anti-dumping and anti-subsidy provisions will tighten up the procedures and define them more clearly and so make both the protectionist abuse of this instrument and attempts to circumvent anti-dumping duties more difficult;
36. Expects to be consulted by the Council on any amendment to the EU's anti-dumping regulation to bring it into line with the revised GATT provisions;
37. Assumes that the agreement on subsidies will impose stricter discipline on all contracting parties, thus reducing possible trade-distorting effects, while enabling the EU to maintain its regional, environmental and research policies, which are essentially based on non-specific government subsidies;

(e) Trade in services

38. Regards the establishment of multilateral rules on international trade in services set out in the General Agreement on Trade in Services (GATS) as an urgently needed complement to the world trade order;

39. Considers most-favoured-nation treatment, national treatment and the transparency of government arrangements to be essential principles for trade in services, but is aware that service markets, which are usually subject to extensive internal rules on access, can only be opened up gradually;
40. Considers, therefore, the approach chosen by the contracting parties of negotiating not only an agreement in principle, the GATS, but also national schedules of initial commitments and exemptions from most-favoured-nation treatment in specific sectors for a limited period to be objectively justified;
41. Is disappointed, however, that the USA in particular was not prepared to make a significant contribution in the areas of financial services, sea transport and telecommunications that would enable EU suppliers to enjoy conditions comparable to those which foreign suppliers enjoy in the EU's internal market, but welcomes the continuing negotiations on these issues and calls on all parties to continue these negotiations with a view to meeting their objectives within the time-scale proposed;
42. Assumes that the agreements on trade in services will not prevent the audiovisual sector from continuing to receive government assistance, which is considered essential for the preservation of Europe's cultural identity;

(f) Protection of intellectual property

43. Regards the agreement on the protection of trade-related intellectual property rights (TRIPs) as a decisive breakthrough in completing the world trade system, since it will lead to a significant reduction in the trade-distorting effects of differing or, in many cases, non-existent national provisions;
44. Is aware that only major concessions by the developing countries made the approval of this agreement possible, but also points out that better protection of intellectual property rights will lead to an improvement in conditions for foreign investment in the developing countries;
45. Calls on the GATT contracting parties to incorporate into their national legislation without delay the commitments entered into in the TRIPs agreement and also to provide for effective sanctions where protected property rights are violated;

(g) Trade-related investment measures

46. Hopes that the implementation of the agreement on trade-related investment measures (TRIMs) will further improve the investment climate especially in the developing and also the newly industrializing countries, which have often pursued a discriminatory policy towards foreign investors in the past;

(h) Developing countries

47. Welcomes the fact that developing countries too will benefit from the outcome of the Uruguay round and that their integration into the world market will be improved; believes however that further efforts are needed to establish a just world economic order which will enable developing countries to secure equitable prices for their goods;
48. Notes that in the field of agriculture the losers from the outcome of the Uruguay round will include Less Developed Countries (LDCs) which are at the same time net importers of food, and, in addition to the aid announced, calls for development aid from the industrialized countries to be increased at least to the UN target figure of 0.7% of GDP;
49. Welcomes the fact that within the framework of the WTO developing countries have been authorized not to comply with all rules equally; considers however that weaknesses remain in the form to be taken by the WTO as regards the scope for ensuring that the interests of developing countries are taken into account; takes the view that the option of cross-retaliation as an instrument of trade policy is irrelevant in the case of developing countries; regards open decision-making procedures within the WTO as absolutely essential;

Concluding remarks

50. Expects the procedures for the ratification of the outcome of the Uruguay Round to be set in motion by all the GATT contracting parties immediately after the Marrakesh Ministerial Conference, so that the implementation of the results may begin and the WTO launched in early 1995;
51. Reaffirms its call to be consulted by the Council on the conclusion of the whole negotiating package on behalf of the EU by the assent procedure defined in the second subparagraph of Article 228(3) of the EC Treaty immediately after the package has been signed;
52. Will decide on its approval when it has been fully informed by the Council and Commission of all aspects of the outcome of the negotiations and subject to the provisions of the EC Treaty concerning assent;
53. Regrets that social policy aspects in the form of a social clause based on the minimum standards established within the ILO framework were not discussed during the Uruguay Round negotiations and therefore calls on the Commission to state clearly that it advocates putting the subject of social clauses on the WTO's agenda;
54. Hopes that the GATT contracting parties will agree on a work programme for the WTO on trade and the environment that enables greater account to be taken of environmental factors in the world trade system in the future;
55. Sees the planned inclusion of elements of competition policy as a further significant addition to the world trade order in view of their growing importance for the effective opening of markets after the general lowering of tariff barriers to trade;
56. Instructs its President to forward this resolution to the Commission, the Council, the Member States, the Secretariat of GATT and the GATT contracting parties attending the Ministerial Conference in Marrakesh from 12 to 15 April 1994.

5. URUGUAY ROUND**B4-0464/94****Resolution on the conclusion of the Uruguay Round and the future activities of the WTO***The European Parliament,*

- having regard to its resolutions of 22 January 1993 on environment and trade¹, 9 February 1994 on the introduction of a social clause in the unilateral and multilateral trading system² and 24 March 1994 on the outcome of the Uruguay Round of GATT multilateral trade negotiations³ and its Resolution of 24 March 1994 embodying the recommendations of the European Parliament to the Commission concerning the negotiations in the Trade Negotiations Committee of GATT on an agreement on a Trade and Environment Work Programme⁴,
 - having regard to its assent of 14 December 1994 to the conclusion of the results of the Uruguay Round⁵,
 - having regard to the opinion of the European Court of Justice of 15 November 1994 on the legal nature and legal basis of the Uruguay Round treaties,
 - having regard to the Commission proposal for a Council Decision bringing into force simultaneously the acts implementing the results of the Uruguay Round of multilateral trade negotiations (COM(94)0414),
- A. whereas the new World Trade Organization (WTO) is not subject to any parliamentary control,
- B. whereas further improvements to the GATT, such as the inclusion of social and environmental clauses, can be achieved in the new WTO only by the unanimity principle,
1. Notes with satisfaction that for the first time it has been given the opportunity of ratifying the outcome of a multilateral round of negotiations;
 2. Hopes that, after it has given its assent pursuant to the second subparagraph of Article 228(3) of the EC Treaty, the ratification procedures for the implementation of the results of the Uruguay Round by the Union, its Member States and the other parties to the GATT can be concluded promptly to enable the WTO to commence its work, as planned, on 1 January 1995;

¹ OJ C 42, 15.2.1993, p. 246.

² OJ C 61, 28.2.1994, p. 89.

³ OJ C 114, 25.4.1994, p. 25.

⁴ OJ C 114, 25.4.1994, p. 35.

⁵ Minutes of that sitting, Part II, Item 3(a).

3. Notes with satisfaction that the creation of the WTO at last completes the structure of international economic organizations which began after the Second World War with the setting up of the International Monetary Fund (IMF) and the World Bank;
4. Believes, as a consequence of the opinion of the European Court of Justice of 15 November 1994, that it is essential for the Commission, Council and European Parliament to enter into negotiations forthwith on the conclusion of an interinstitutional agreement defining more accurately the role of the European Union in the WTO;
5. Emphasizes in particular in this context the need for the *acquis* of the common commercial policy, especially decisions taken by a qualified majority, to be upheld and for the Union to act as one in the WTO;
6. Calls on the Commission to monitor closely the implementation of the results of the Uruguay Round by the Union's contracting parties in the WTO and to determine whether they abide by the spirit and letter of the agreements reached;
7. Notes in this connection that the legislative changes proposed by the Commission for the implementation of the results of the Uruguay Round conform to the commitments entered into; calls on the Council to adopt Parliament's amendments to these proposals;
8. Expresses its dissatisfaction at the fact that the proposed legislative changes for implementing the Uruguay Round results were not forwarded to it until the end of October 1994, making proper debate by Parliament before the end of the year virtually impossible;
9. Hopes that the deadlines provided for in the rules on commercial protective measures will be applied as soon as the Commission has provided appropriate staff, and refers in this connection to the decision taken during the budgetary procedure for 1995 to increase staff numbers for these services;
10. Refers to the institutional innovation whereby the European Union as well as its Member States is a member of the WTO, and believes that shared representation at international level of the interests of the Union and its Member States as a reflection of the common commercial policy is a desirable long-term objective;
11. Anticipates that the WTO's strengthened dispute settlement procedure will result in a more objective view being taken in trade conflicts, but also points out that decisions taken under this procedure will be addressed to the WTO's contracting parties and cannot be applied directly in Community law;
12. Stresses that it is essential, if only for the sake of the single internal market, for the Union to adopt a common line even in those areas of the WTO's activities which are not the exclusive responsibility of the Union;

13. **Calls, therefore, on the Member States of the EU to accept the Commission as the sole representative of the Union in all areas of activity of the WTO;**
14. **Is concerned at the investigation into possible unfair commercial practices launched by the US trade representative pursuant to Article 301 of the US Trade Act in connection with the EC's common organization of the market in bananas, and points out that applying unilateral protective measures is in violation of the undertakings made by the US when it signed the Marrakesh Final Act;**
15. **Is concerned about the protectionist tendencies in the newly elected US Congress and is particularly critical in this context of suggestions in Congress that the US might withdraw from the WTO if decisions not in its interests were taken;**
16. **Seeks to be represented at the WTO's biennial ministerial conferences by a delegation with observer status, as was the case at the last GATT ministerial conferences, and to be constantly and fully informed by the Commission in the meantime and insists on the greatest possible transparency of the WTO's activities and on Parliament's participation under the procedure provided for in the second subparagraph of Article 228(3) of the EC Treaty to any decision taken within the WTO;**
17. **Hopes that satisfactory results can be achieved in the financial services and telecommunications sectors before the end of the first half of 1995 at a multilateral level during the current negotiations in order to facilitate a comprehensive opening up of the markets in these important service sectors;**
18. **Is concerned at the sluggish progress of the talks on reviewing the GATT agreement on civil aircraft aimed at reaching an international agreement on more stringent rules for direct and indirect state subsidies; regrets the disappointing results of the bilateral agreement on civil aircraft between the US and the EU and does not therefore see it as an adequate basis for a multilateral arrangement;**
19. **Calls, in this connection, on the US Administration, when implementing the bilateral agreement on civil aircraft, to provide the Commission with all the information it requires to monitor US compliance with the agreement;**
20. **Believes, despite the current recovery in worldwide demand for steel products, that a multilateral agreement on trade in steel is essential to enable the main producer countries to achieve a planned and socially acceptable reduction in worldwide overcapacities;**
21. **Points to the great economic significance of the GATT agreement on public procurement and to the bilateral agreements between the European Union and the US which go beyond GATT, whereby suppliers from the Union will be granted access to the public supply markets of most of the states of the US, to major public service corporations and to supraregional airports and seaports and calls on the Commission to pursue these objectives at the forthcoming meetings of the WTO;**

22. **Calls on the Commission to ensure compliance with the reciprocity in the opening up of markets which forms part of the bilateral EU-USA procurement agreement;**
23. **Emphasizes the need for the WTO at last to link trade issues to environmental, social, consumer and animal protection issues with the aim of accommodating conflicting interests and insists that WTO decisions must on no account be permitted to threaten existing international or EU standards;**
24. **Urges the Commission to secure a moratorium on GATT/WTO challenges to such legislation in order to facilitate constructive discussion within the Trade and Environment Committee (TEC), to press for maximum transparency in this committee and to report immediately and then annually thereafter on progress being made with these matters;**
25. **Hopes that the work of the WTO in respect of trade and the environment will result in an improvement in the multilateral system of trade which will help reconcile the worldwide trend towards a greater division of labour with the objectives of environmentally compatible development;**
26. **Considers that to this end the WTO must cooperate with international organizations concerned with the environment and development, such as the Commission on Sustainable Development and the United Nations Environmental Programme;**
27. **Calls, in this connection, on the members of the WTO to examine the possibility of using Article XX(b) of the GATT as the basis for commercial protection measures in instances where one contracting party seeks to acquire commercial advantages through the systematic violation of internationally agreed environmental standards; considers that the WTO should also examine the possibility of introducing an improved system for investigating and regulating disputes that would make it possible at the same time to avoid using environmental measures for protectionist ends but also to support the efforts made by countries that want to ensure the harmonious development of their economies through sustainable management of their resources;**
28. **Considers that the inclusion of a social clause based on the ILO Conventions on child labour, forced labour and trade union and negotiating rights should be placed on the future WTO's agenda and calls on the Commission and the Member States of the European Union to emphasize this question within the WTO;**
29. **Urges the WTO to work closely with the International Labour Organization in this area;**
30. **Points to the effect of currency fluctuations on competition in foreign trade and calls on the WTO, in close cooperation with the IMF, to ensure that the reductions in customs duties agreed in the Uruguay Round cannot be undermined through competitive currency devaluations;**
31. **Calls, finally, on the Member States of the WTO to consider the extent to which elements of an international competition policy (such as merger control and abuse of dominant market positions) might be included in the world trade system, thereby reducing the need for recourse to trade protection measures;**

32. **Calls on the Commission to carry out a full assessment of the results of the Uruguay Round, including proposals to improve the situation of the developing countries in the international trading system, the conclusions of which would be taken into account when Lome IV is revised;**
33. **Insists in this context on the need to fight social dumping resulting from trade; invites the European Union, its Member States and the other WTO members to insist on the consultation of trade unions (workers' representatives) and other interested organisations in cases of such social dumping cases resulting from trade;**
34. **Notes with interest the applications for membership of the WTO by a number of successor republics of the CIS and other former state-trading countries which have launched economic reforms to create a market economy, and the application by Taiwan;**
35. **Calls on the Commission to ensure, during accession negotiations, balanced conditions of accession in terms of the rights and obligations of the new WTO members;**
36. **Calls on the Council and the Member States to widen the powers of the European Court of Justice to enable it to scrutinize the findings after arbitration in WTO disputes and rule on their compatibility with the WTO and the agreements on which it is founded and with the principles of Community law; insists upon the right of the European Union and its Member States to denounce the WTO Agreement in the event of repeated and arbitrary findings against the Union in WTO disputes;**
37. **Instructs its President to forward this resolution to the Commission, the Council, the governments of the Member States and the Secretariat of the WTO.**

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