Accountability in the World Trade Organization

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I. INTRODUCTION

A. THE FRAMEWORK

Since its establishment on 1 January 1995, the World Trade Organization (WTO) has become one of the three pillars of the world economic order, joining the Bretton Woods twins: the International Monetary Fund (IMF) and the World Bank Group. Almost fifty years after the failure of the creation of an International Trade Organization (ITO) in 1948, and although the original concept for the ITO was much more comprehensive than the current WTO, the global economic order of the post-World War II era was finally completed.

The global trade volume of nearly six trillion U.S. dollars (1995) is indicative of the paramount economic importance of international trade for economic growth and sustainable development. Trade is not an end in itself, it is, rather, a means of contributing to sustainable development, including employment, satisfaction of basic needs, food security and environmental protection. The process of economic globalization is increasingly undermining the outreach of national policy. In an unprecedented manner, recent trade liberalization agreements are subjecting sectors of domestic policy to international rules by defining binding minimum standards.

The multilateral system, therefore, is gaining ground at the expense of national policy-making. The Uruguay Round was comprised of a multitude of negotiated subjects which had to be accepted or rejected as a whole. Such package deals lead to a deficit in democracy. National parliaments no longer determine legislative language themselves in the areas concerned. The people’s representatives simply approve what the trade diplomats and the governments have negotiated in a complex give-and-take process leading up to the acceptance of a multilateral package.

Against this background, the accountability of the WTO and its Member governments to civil society, in general, and to democratically elected parliaments, in particular, becomes crucial. The legitimacy of the WTO trade rules is at stake. The principles of good governance which are often upheld in policy dialogue with governments of the South, are also applicable to multilateral organizations. So far, however, a system of democratic checks and balances, in the classic sense, has not evolved in the multilateral trade field. Seen in this overall context, non-governmental...
organization (NGO) participation is not a threat to the WTO and trade diplomacy, but contributes to securing public support for trade in view of sustainable development.

B. AIMS AND METHODOLOGY

One of the main goals of this article is to collect and present the facts, at the level of the WTO and a number of selected countries, regarding access to information, as well as NGO and parliamentary participation. Questions such as the following will be answered: what is the role of NGOs in the WTO? What role do NGOs play at the national level in influencing government positions? To what extent is access to information secured? Do parliaments play a role in shaping trade policy, and in what way? What are the national procedures leading to governmental negotiating positions? What negotiating capacities are available to work on multilateral trade issues? In a second step, conclusions and proposals will be offered on how to improve accountability.

The methodology of this article follows a double track which has already proved successful in similar research on the accountability of Executive Directors in the Bretton Woods institutions.1

By 1 July 1996, more than one hundred and twenty countries were Members of the WTO. It was not possible to prepare a complete survey with the limited means at our disposal. Therefore, the fifteen largest trading nations were included in the survey. The five economically weakest trading nations in each of the three continents, Africa, Asia and Latin America, were added. Only WTO Members have been taken into account. Countries where no, or entirely inadequate, data were available were eliminated. These criteria led to the following list of countries being included in the survey: Austria, Belgium, Canada, France, the Federal Republic of Germany, Hong Kong, Italy, Japan, Korea, the Netherlands, Singapore, Spain, Switzerland, the United Kingdom, the United States of America, Burundi, Guinea, Mozambique, Sierra Leone, Uganda, Bolivia, the Dominican Republic, Guatemala, Honduras, Nicaragua, Bangladesh, India, Indonesia, Pakistan and Sri Lanka.

II. HOW THE WTO WORKS

In studying the accountability of the WTO, we are necessarily led to looking into issues related to the balance of power. An examination of the WTO structure and its system of decision-making therefore proves indispensable.

The Uruguay Round of multilateral trade negotiations, the broadest and most comprehensive ever undertaken, involved more governments and touched on more questions than any other round of negotiations previously held under the auspices of the

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1 See Genter, 1993. Approximately twenty interviews were conducted, mainly in Geneva, with representatives of WTO Member States and WTO officials. All these interviews followed a structured questionnaire. The questionnaires were also sent to NGOs in the South and North. The authors would like to express their profound appreciation for the open spirit of co-operation they encountered in both the trade and NGO communities.
GATT (General Agreement on Tariffs and Trade). The negotiators explored trade in goods, services and intellectual property and the Final Act contains approximately thirty Agreements and Memorandums of Agreements, specific national obligations on the reduction of barriers to trade and twenty-seven decisions and declarations. This collection represents a unique commitment.

The newly established World Trade Organization lays the legal and institutional foundation for the multilateral trading system. Its role is to facilitate the implementation, administration and operation of all Multilateral and Plurilateral Trade Agreements negotiated during the Uruguay Round. The WTO will also serve as the forum for negotiations among its Members on issues targeted in existing Agreements and for future multilateral negotiations.

A. THE STRUCTURE OF THE WTO

The main structure of the WTO is the Ministerial Conference at which all Member States are represented. It meets at least once every two years and has the authority to take decisions and to submit interpretations or amendments on all questions relating to the Agreements of the Uruguay Round. In the intervals between meetings of the Ministerial Conference, WTO functions are carried out by the General Council, composed of representatives of all the Members. This Council also discharges the responsibilities of the Dispute Settlement Body and the Trade Policy Review Body.

Moreover, it has established a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights. These three Councils, which are open to representation by all governments, oversee the implementation of agreements negotiated in those fields. They are responsible for formulating recommendations to the General Council for the purpose of interpreting, amending or authorizing waivers in their respective areas.

Three other bodies have been set up by the Ministerial Conference and report to the General Council. The Committee on Trade and Development (CTD) deals with issues affecting developing countries, particularly, the least-developed countries; and the Committee on Balance-of-Payments Restrictions handles consultations between the Members of the WTO and countries which adopt such restrictions. Administrative and budgetary questions are reviewed in the Committee on Budget, Finance and Administration. At the beginning of 1995, the General Council officially established a Committee on Trade and Environment (CTE) which will report on its activities at the first WTO Ministerial Conference at Singapore in December 1996. Representatives of all Members may participate in these various committees.

Each of the WTO Plurilateral Agreements—relating to trade in civil aircraft, government procurement, and the dairy products and bovine meat sectors—provides for the establishment of a managerial body reporting to the General Council.
B. THE SECRETARIAT

The Secretariat, established by the Conference, is based in Geneva, Switzerland. It is headed by a Director-General who, together with four Deputy Directors-General, are appointed by the Ministerial Conference. The Secretariat is comprised of four hundred and fifty employees and is exclusively international in character. It neither seeks nor accepts instructions from any government or any other authority external to the WTO. Its main aim is to provide a secretariat for the subsidiary WTO bodies for negotiations and the implementation of agreements. It is primarily responsible for technical support to developing countries. WTO economists and statisticians conduct studies on the work of the Organization and trade policies, and its lawyers assist in the resolution of trade disputes. Another part of their work relates to negotiations on the accession of new Members. The Secretariat has neither the power nor the capacity to propose or make decisions concerning the multilateral trading system. This lies exclusively within the competence of Member States.

C. DECISION-MAKING

The WTO adheres to the GATT tradition of decision-making which seeks the adoption of decisions by consensus. Where consensus is not possible, the matter is put to the vote. In such cases, decisions are taken by the majority of votes cast, and are based on the principle of “one country, one vote”.

The Agreement Establishing the WTO covers three different situations. Firstly, the Members of the WTO may decide, by a three-fourths majority, to adopt an interpretation of one of the Multilateral Trade Agreements. Secondly, with the same majority, the Ministerial Conference may decide to grant a Member a waiver to an obligation imposed by a Multilateral Agreement. Thirdly, an amendment to one of the provisions of the WTO Agreement may be adopted if it is approved, either by all the Members, or by a majority of two-thirds, depending on the nature of the provision in question. However, amendments take effect only for the WTO Members which accept them. Lastly, decisions relating to the admission of a new Member are adopted by the Ministerial Conference by a two-thirds majority.

D. IMPLICATIONS IN THE AREA OF ACCOUNTABILITY

The Ministerial Conference is the main organ within the WTO. Although during the interval between these meetings the General Council carries out its functions, it is the Ministerial Conference which will take major decisions on the orientation of the multilateral trading system. A campaign for increased accountability in the WTO, therefore, has scant hope of having meaningful impact at the Ministerial level unless co-ordinated action on the international level is undertaken just before the Conference. Ministers may naturally be more sensitive to the media and open to the public during
the Ministerial Conference. However, as in the case of the Singapore Conference, the duration of these meetings is often reduced to a minimum (four to five days). The Ministers make their declarations and study the various points on the agenda and during the short time they have left, they try, as a matter of priority, to meet each other informally.

The need to improve accountability lies to a greater extent with the various WTO bodies and, in particular, within the committees. The precise role of these bodies is to formulate recommendations. It is during this process, and through informal discussions, that decisions of the Ministerial Conference and the General Council take root. The role of the Secretariat is also important because it is responsible for relations with the public, in general, and with the non-governmental organizations in particular.

The policy advocated by the representatives to the WTO is developed at the national level. Once formulated, it may be difficult to try to modify it at the WTO level. Increased accountability during the national decision-making process is, therefore, of utmost importance.

III. THE ROLE OF NON-GOVERNMENTAL ORGANIZATIONS

The private organizations working on WTO matters may be divided into three broad groups. In the first instance there are the umbrella professional associations, such as chambers of commerce, trade unions, groups of importers and exporters of textiles, chemicals, pharmaceuticals, machinery, and agricultural associations. These are groups whose professional activity is directly affected by WTO rules. They are the ones whose interests are most at stake and which are most frequently consulted by the authorities.

Research institutions and universities fall in the second category. This group follows the development of the multilateral trading system closely and carries out various types of studies on the WTO.

Lastly, there are the non-profit organizations which work in sectors, such as the environment, development, fair trading, consumer protection, the social sector, health, religious NGOs and women's associations. This study is most interested in this last group and it is this group which is referred to when speaking of NGOs.

As agents of accountability, NGOs have a role to play in the development of the multilateral trading system. The principle of "good governance", which is so often cited in the dialogue with governments in the South, must also be applied to the multilateral organizations. NGO participation represents an effective means of bolstering public support and enhancing the debate. NGO interest in the WTO has grown sharply in recent years and the need to establish modalities of dialogue has been felt at several levels. First of all, the contribution of NGOs can be effective only to the extent that they are well informed. This introduces the problem of transparency and access to documents. Secondly, mechanisms through which the NGOs can make a contribution to the WTO should be put in place. The role of NGOs lies at two levels, namely, within the Member
States and at the WTO. The following sections examine these two aspects and, lastly, an assessment of NGO activity in this area will be presented.

A. RELATIONS BETWEEN THE WTO AND NGOs

The issue of relations between the WTO and private organizations had arisen time and again at the GATT. Non-governmental organizations and umbrella associations had always wanted closer participation in the work of the GATT. However, since its establishment in 1947, the GATT had never had formal relations with the public. Discussions were usually held behind closed doors and information was often disclosed in a piecemeal manner. The only formal consultation with civil society took place in June 1994 during a symposium on trade, environment and sustainable development. It is now up to the WTO to abandon this policy of secrecy which has certainly led to the public’s mistrust of the institution. The principles of accountability, transparency and consultation should be an integral part of WTO policy.

1. WTO Provisions

In their haste to conclude the negotiations of the Uruguay Round and sign the Final Act at Marrakesh on 15 April 1994, the contracting parties were not able to reach an agreement on the modalities of possible collaboration and had to postpone discussion of relations between the WTO and NGOs. Therefore, as a result, Article v.2 of the Agreement Establishing the World Trade Organization simply states:

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

Although the Article provides only that the General Council “may” make such arrangements, it nevertheless stresses the intention of the contracting parties to collaborate with NGOs in some way or another.

The only other WTO provision allowing for NGO participation is to be found in the dispute settlement mechanism. Although most of the procedure is confidential and the principle restricting documents is practically automatic as long as the matter is not resolved, Article 13.2 provides that:

“Panels may seek information from any relevant source and may consult experts to obtain their opinion on certain aspects of the matter...”

As it is formulated, this Article theoretically allows for the technical contribution of NGOs, upon the request of the panels.

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2 The aim of this mechanism is to resolve disagreements between Members under all provisions of the WTO Agreement. As a general rule, disputes are examined by a panel composed of three international lawyers. The parties to the dispute cannot of their own accord prevent the adoption of panel reports. It is possible to present an appeal before the body established for this purpose. If the Member concerned does not implement the recommendations of the panel, the complaining party may then retaliate through the adoption of certain economic measures.
NGO participation could possibly be enhanced if recourse to this type of contribution were to be made compulsory. NGOs or the individuals which are sufficiently involved should have the right to intervene and to offer an informed opinion which might otherwise be unavailable to the panels. This right would, of course, be restricted to the submission of evidence and arguments before the panel. Such a process would heighten transparency in the dispute settlement mechanism.

2. The Committee on Trade and Environment

When the Final Act of the Uruguay Round was signed at Marrakesh, the Ministers adopted a decision on trade and environment. That decision provided for the formation of a Committee on Trade and Environment. One of the items on its programme of work was the formulation of recommendations on relations with NGOs. During the discussions, the United States argued strongly in favour of the granting of observer status, especially within the CTE, to NGOs (including interest groups dealing with the environment, development and business) and greater transparency in the WTO. Such participation of civil society would lead to increased WTO credibility. Most delegations believed observer status should continue to be restricted to non-Member governments and international organizations. This matter has not been studied in depth by the CTE, and discussions stopped after June 1995 and were taken up in the General Council. It should be pointed out, in any event, that the CTE practises a rather advanced policy of transparency in that it publishes and distributes the minutes of each meeting free of charge. Lastly, the fact that the CTE has scheduled consultations with NGOs for 26 and 27 September 1996 should be mentioned.


Following lengthy consultations with the contracting parties, the General Council adopted two decisions for the application of Article v.2 at a meeting held on 18 July 1996. One of these decisions refers to arrangements with NGOs (see Annex 1 to this article), and the other to the circulation and de-restriction of documents (see Annex 2).

With regard to de-restriction, the decision taken by the General Council is based on the principle that all documents circulated among WTO Members after the entry into force of the Agreement Establishing the WTO are no longer restricted. However, an appendix enumerates the documents which are still restricted but which could be de-restricted. A request to examine a document in order to make it accessible to the public is made with prior notice to the Members. The notice proposes a date, normally sixty days after the date the notice has been circulated. If a Member objects to a de-restriction, the document remains restricted until the end of the following year, at

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which time it will be reconsidered; otherwise, it will be de-restricted. The Secretariat is responsible for drawing up a list of documents likely to be considered for de-restriction. In addition, every six months, the Secretariat should circulate a list of newly de-restricted documents as well as those remaining restricted.

A special procedure is envisaged for each document appearing in the appendix. Working documents are de-restricted upon their adoption or as soon as a decision is taken. Otherwise, the matter is examined, at most, six months later. Documents relating to the Committee on Market Access, the Committee on Trade and Development and the Trade Policy Review Mechanism are automatically considered at the end of each six-month period (January to June and July to December). The notes by the Secretariat and minutes of meetings of all WTO bodies, including those of the sessions of the Ministerial Conference, are considered for de-restriction six months after the date on which they were circulated among the Members of the WTO. Reports by the Secretariat and the State concerned, relating to the trade policy mechanism, including the annual report by the Director-General, are de-restricted upon the expiry of the press embargo. Documents labelled “restricted” which are submitted by a State to the Secretariat for circulation among the Members of the WTO are considered at the end of a six-month period. Lastly, panel reports circulated in accordance with the provisions of the dispute settlement mechanism are restricted for a maximum period of ten days from the date of circulation if one of the parties to the dispute so requests. This procedure for the circulation and de-restriction of documents will be reviewed and modified, if necessary, by the General Council, two years after its adoption.

The number of texts the WTO de-restricts is considered too large for them to be made public automatically. The Secretariat should therefore transcribe the information on the WTO Web site.

It is quite clear that, in most cases, the decision does not provide for any automatic mechanism for de-restriction and any State may, at will, block the process by simply indicating its opposition. The other major problem pertains to the timing of de-restriction which may vary on the average between sixty days and six months. No document will be de-restricted before it has been discussed by the WTO. Interest in most of this information is thereby lost because the issue is no longer current.

With the exception of documents which are strictly confidential, it would be wise to set up a mechanism for the automatic distribution of most documents. Member States should be able to oppose the de-restriction of documents solely on the basis of criteria determined in advance. Information should be accessible from the moment it is circulated among the Members of the WTO in order to allow NGOs to make their contribution in good time and to participate knowledgeably in discussions.

The General Council has adopted a number of guidelines on arrangements with NGOs. Member States have removed all possibilities for NGO participation in WTO discussions and observer status has been excluded. Several reasons for this have been advanced. First of all, the WTO is not a member of the United Nations and is therefore
not obliged to practise the same degree of openness towards civil society. On the other hand, developing countries fear excessive participation of umbrella organizations from the North. These economic groups often have greater resources available to them to participate in the development of the WTO than do certain governments or NGOs in the South. However, the main argument is that the WTO differs considerably from other international organizations in the sense that it is an intergovernmental forum for trade negotiations. It would lose this feature if non-governmental organizations were to become involved in the discussions. Since WTO policy is defined by its Member States, NGOs must seek out dialogue with their authorities in order to contribute to the multilateral trading system.

The Secretariat however finds itself playing a more active role in its direct contact with NGOs. First of all, it pursues a practice of responding to requests for information. In concert with Members, it also arranges symposiums or seminars on specific issues with NGOs, and facilitates contact with WTO Members. There seems to be no opposition to the idea that NGOs make their contribution informally, through the Chairman or the Secretariat, to participants at various meetings. In practice, the provisions seeking to strengthen links with the Secretariat on an informal basis are not a novelty. Effective collaboration with NGOs will depend even more on the material capacity and the will of the Secretariat.

In this context, the establishment of a liaison office having the necessary resources to respond effectively to NGO requests could be considered. This would guarantee that their contributions would be passed on to the relevant Members of the WTO and that full information is disseminated quickly. Financial means must be made available to ensure that NGOs from developing countries can also have access to information, attend consultation sessions and convey their positions to the WTO.

With regard to the question of observer status, there are those who make a distinction between the WTO and the other UN organizations. On the contrary, the current trend is to stress the fact that all issues are closely linked and that trade cannot be separated from development, neither can law be separated from labour or the environment. The closest possible co-ordination between various organizations, which is a much sought-after ideal within the United Nations system, must also include the WTO. Rapprochement begins with a single policy towards civil society. And this is even more so when it is the same governments which accept NGO participation in the United Nations and reject it at the WTO.

The main argument against NGO collaboration, under the pretext that the WTO is a forum for negotiation, is equally deserving of criticism. Civil society has been closely associated with the development of international law in other conferences and institutions such as the UN Conference on Environment and Development (UNCED) or the International Labour Organisation (ILO). The UN Conference on Trade and

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Development (UNCTAD), which was at times the arena for trade negotiations, involves NGOs more fully than does the WTO.

Besides, we may wonder whether the WTO is only a forum for negotiations. The work carried out in the CTD and the CTE, for example, cannot be likened to a trade negotiation. Clearly, they are indeed forums of debate in which certain specific questions are raised in order to formulate recommendations.\(^5\) Yes, is it not precisely in such debate that NGOs have a role to play? Issues relating to the environment and development are indeed topics which directly affect civil society. It should therefore be possible to consider the granting of observer status at least in these two Committees.

The CTD and the CTE could each establish an advisory committee composed of non-governmental organizations and independent experts. This would provide platforms for exchange and discussion and would be responsible for advancing recommendations. There are numerous precedents of advisory committees in other international bodies and the WTO would do well to take its inspiration from them.\(^6\)

In order to address the problem raised by the developing countries as to the risk of excessive participation on the part of private economic sectors, it would be advisable to establish a clear definition of what is meant by “non-governmental organization”. A selection of organizations to be consulted could also be carried out in order to avoid having too many participants. Such selection should be done in collaboration with civil society.

One could also consider the setting up of an expert panel on trade and sustainable development as proposed by the WWF International. Such a working group would be charged with the task of formulating recommendations for the elaboration and implementation of original policies at the national and multilateral levels in the area of sustainable development. It would be composed of experts (NGOs, government representatives, international civil servants, academics) in the field of international trade, environment and development, and would pass on, inter alia, its reports to the WTO. Such an instrument would serve to inform and involve the public more fully and would also widen the debate on sustainable development.

Another way of improving NGO participation is through impact assessment studies on development and the environment. At the moment, the WTO does not systematically undertake this type of study for agreements negotiated under its auspices. The absence of such analysis deprives governments, parliaments and civil society of information which is essential for serious and democratic political assessment of the Uruguay Round.

It is extremely important to establish guidelines to systematically analyse such

\(^{5}\) See the CTE mandate according to the decision of the Ministerial Conference on trade and the environment.

\(^{6}\) The Intergovernmental Panel on Climate Change and the Joint Public Advisory Committee established by the North American Free Trade Agreement (NAFTA) are among these precedents.
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impact.7 NGOs could participate actively in the conduct of these studies through their technical contributions.

Civil society itself should find modalities of dialogue with the World Trade Organization and facilitate information exchange. The International Centre for Trade and Sustainable Development in Geneva is now working on precisely that task. Arising from a development and environmental NGO initiative, this Centre seeks to support NGOs from both North and South by providing an information service. Its aim is actually to have access to documentation, primarily from the WTO and UNCTAD, and to distribute it with brief analyses and bibliographic annotations. There is also a plan for the publication of a monthly bulletin to carry information on the activities and campaigns of partner organizations and the WTO agenda. The Centre will also endeavour to facilitate dialogue among NGOs themselves and with the WTO by organizing various types of meetings, study groups and seminars. It is not a new pressure group speaking on behalf of NGOs, rather, it is an initiative aimed at co-ordinating and supporting their activities in the sphere of sustainable development.

B. NGOs AT THE NATIONAL LEVEL

As has been shown, the WTO is reticent towards civil society and wishes to promote dialogue in the capitals. It is therefore with their own governments that NGOs should seek contact. If their point of view is taken into consideration when the national position is being developed, it will be defended at the WTO. On the national level, accountability rests at different levels, just as consultation with NGOs, the policy of transparency pursued by the government and various other modalities of participation. This section will review the various aspects in describing the practices in force in the countries surveyed and by proposing ways of improving accountability at the national level.

1. NGO Consultation

NGO consultation is a very important process from the point of view of accountability because it gives civil society an opportunity to receive information and to present its position directly to the decision-makers. Similarly, it is a way for the administration to determine the interests of the public. While national policy is being developed, governments frequently consult civil society. In general, each ministry organizes its own consultations on various topics, as needed and selects the organizations which will be heard. In the case of the WTO, an overwhelming majority of countries surveyed consult, first and foremost, the umbrella professional associations—chambers of commerce, trade unions, groups of exporters and importers of textiles, chemicals, ...

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7 In the area of the environment these guidelines could be devised along the lines of the methodology developed by the Joint Session of Trade and Environment Experts of the Organisation for Economic Co-operation and Development (OECD) which identifies four main types of effects to be analysed systematically.
pharmaceuticals, machines, agricultural associations, among others. The development, environmental or consumer-oriented NGOs are consulted less frequently on specific subjects.

— At the **European level**, some organizations in the field of business, such as the Union of Industrialists and Employers, Confederation of Europe (UNICE), meet regularly with the Commission, to discuss trade and the environment. NGOs may make appointments with officials of the Commission to exchange information. The Member States of the European Union regularly consult professional umbrella organizations, and NGOs to secure their contribution in areas such as trade and the environment, or on more specific topics such as textiles or agriculture. Most often, there are consultations on trade policy, in general, and rarely on WTO in particular.

— In most **developing countries**, there are no formal or informal mechanisms for consultation with NGOs. The government limits itself to input from the economic sectors. It must be recognized that this is also due to the fact that there are few NGOs working in this area.

Some countries, however, have put more advanced mechanisms in place, as far as consultation is concerned. That is especially true of Canada, the United States and Switzerland.

— In **Canada**, the “trade advisory system” has been developed to ensure a confidential mechanism for information exchange and recommendation between the government and the private sector in the area of international trade. It is divided into two principal components: the International Trade Advisory Committee (ITAC) which deals with international trade topics which are not specific to a particular sector or which concern several sectors at once; and various Sectoral Advisory Groups on International Trade (SAGITS) which take up topics affecting specific trading sectors. In the area of the environment, ITAC has established a complementary Task Force on Trade and Environment which includes representatives of industry, labour, the business community, the academic world and environmental NGOs. The information circulating within committees is sometimes confidential or restricted. Committee members must sign, in advance, a Security Declaration in which they promise not to divulge this information. (For a more detailed description of the Canadian system, see Annex 3). Furthermore, the government conducts broad and frequent informal consultations at all levels with various interest groups. As far as the Uruguay Round is concerned, the Minister of Foreign Affairs and International Trade has published a statement giving a detailed description of the implementation of the WTO Agreements.

— In the **United States**, the private sector advisory committee system was set up in 1974 by the U.S. Congress under the auspices of the Office of Intergovernmental Affairs and Public Liaison. These committees provide information and recommendations on the negotiating objectives and bargaining positions of the United States before the conclusion of trade agreements. They also make their contribution once these
agreements are entered into force, as well as in the development, implementation
and administration of U.S. trade policy. The system consists of thirty-three advisory
committees which are further arranged into three groups. The President's Advisory
Committee for Trade Policy and Negotiations (ACTPN) which considers trade policy
issues in the context of the overall national interest; seven policy advisory
committees covering specific areas such as agriculture, labour, environment,
investment and services, trade with Africa, intergovernmental policy and industry.
There are also twenty-five technical, sectoral, and functional advisory committees
representing specific sectors such as textiles or dairy products. These committees
hold regular formal consultations with the private sector. In the area of information,
the members of the private sector advisory committees have unlimited access to
information on the WTO. This includes restricted documents and information
relating to ongoing negotiations. On WTO matters, the Office of Intergovernmental
Affairs and Public Liaison has led and facilitated consultation with the private sector
dealing specifically with the results and implementation of the Uruguay Round.
Congress has given these various committees the authority to prepare a report,
following consultations, to determine the attitude of civil society.\footnote{This document is available from the office of the United States Trade Representatives (USTR) under the title \textit{ACTPN Report on WTO.}}

--- In Switzerland, various advisory committees have already been set up by the
Administration, which regularly deals with topics related to international trade and
the WTO. Among these, it is worth citing the Advisory Committee for External
Economic Policy, the Committee of Customs Experts, and the Permanent
Economic Commission. In the field of environment, one of the interdepartmental
working groups established for the follow-up to the Rio Conference handles trade,
the environment and the issues discussed in the CTE. Since the creation of the WTO,
the Federal Council has committed itself to respecting the principles of Swiss
development co-operation (see Annex 4). As a result of that decision, and at the
request, among others, of the NGOs, a GATT/WTO Sub-Committee was established
within the framework of the Advisory Committee for Development Co-operation
and Humanitarian Aid. This body deals exclusively with subjects which pertain
directly to development and the WTO. These various advisory commissions meet
regularly and assemble members of the administration, the economic sectors and the
NGOs. The participating sectors and NGOs are, in fact, appointed by the
administration and are bound to handling the documents they receive with the
strictest confidentiality. Only under these conditions are certain restricted WTO
documents occasionally distributed in order to get the opinions of the members.
These advisory commissions represent, for the NGOs, an important source of
information and a means of contributing and making their voices heard. However,
it should be added that, in 1989, during the negotiations of the Uruguay Round, the
NGOs had asked to be included formally in government consultations with umbrella associations. On that occasion, the authorities had opposed this request.

In summary, it can be stated that formal mechanisms for consultation with NGOs are rare. Of the thirty countries surveyed, only three effectively involved civil society in WTO work. In the majority of cases, governments held only informal and irregular consultations. Most of the organizations consulted are umbrella associations.

In this context, it would be advisable to encourage the establishment of such advisory committees generally at the national level to deal with trade in general and WTO matters in particular. Lastly, the development, environmental and consumer-oriented NGOs should be involved in this process in the same capacity as the umbrella organizations.

2. Transparency

Government accountability towards civil society implies a policy of transparency. In WTO matters, access to information is vital for NGO contribution. Consultative mechanisms represent an important channel of information, but these are reserved for only a few organizations. Apart from the information appearing in the media, documents produced by the international organizations, university studies and documentation issued by the NGOs themselves, it is important to be aware of the policy of different national administrations on transparency. Comparison between countries reveals stark contrasts.

— The United States, in its bid to promote public discussion, and due to the enactment of the Freedom of Information Act, has rather advanced provisions on transparency. The U.S. position is disseminated widely, and reports produced by the delegation are published. The Federal Register is an excellent source of information on the government’s activities and U.S. intentions in negotiations. Deliberations in parliamentary committees are open to the public. Direct contacts with the administration are another source of information for the private sector. The information campaigns on trade led by the office of the U.S. Trade Representatives (USTR) on its Web site should also be mentioned.

— While the official national position in Switzerland is not kept secret, it is not possible to have access to delegation reports, which are confined to the Administration. The Administration, in turn, respects restrictions placed on WTO documents. The only way to have access to them is by confidential means, through the advisory committees established by the Administration. The general public can obtain information by contacting the members of the Administration directly. Information on work carried out in the parliamentary committees is not available to the public; however, press releases are issued whenever important issues are discussed. On the contrary, parliamentary deliberations in plenary session are open to the public.

— In Europe, WTO matters are debated in the REX Committee of the European Commission, which is open to the public.
Parliament. These deliberations are open to the public. Recently, the European Commission submitted a communication on trade and environment to the European Parliament and the Council of Ministers on its position in the CTE and that document will be published. On the other hand, the European Union plays the document restriction game, even if it is possible to obtain certain information orally. The best way to obtain information on WTO discussions in the Commission is to contact that body directly. The only formal channel of communication is through the European Union spokesperson.

On the national level, Member States of the European Union have their own policy on transparency. However, Article 113 of the Treaty Establishing the European Union provides that the fifteen Members are obliged to toe the Community line and defend the policy of the Union.

- In the United Kingdom, the national position is made public except during negotiations. Parliamentary reports are published and certain restricted documents are distributed to privileged NGOs before they are discussed at the WTO if they are not considered to be too confidential. This is justified by the fact that if the government wishes to have real NGO input, it must provide them with correct information. This is also the practice in Austria and the Netherlands.

- In Spain, the government briefs the various parliamentary committees. This information, along with the discussions carried out in the committees, are published in the Boletín de las Cortes Generales. The official position and unrestricted WTO documents are available through the Boletín de Información Comercial Española (BICE). Spain follows the WTO practice with respect to restricted documents.

- The same principle applies to France. Pursuant to the French law on government documents of July 1988, notes to Ministers are not distributed publicly. On the other hand, access is available to government documents intended for parliament. The Prime Minister's Information Office regularly publishes notes on current topics apart from ongoing negotiations. Each Ministry issues press releases, but never working papers.

- In Germany, the work conducted in the economic committee of the Bundestag is, in principle, not open to the public. The Ministry of the Economy from time to time arranges meetings with umbrella organizations. Nevertheless, the German government regards the WTO as a governmental organization and does not consider direct NGO participation appropriate. The WTO practice of restricting documents is respected and there are no official channels of information. Depending on the case, the competent authority is prepared to keep NGOs informed but appears to be more reticent during negotiations. The same policy holds for Italy.

- In Japan, the official position on various matters is made available upon request and, in this respect, there are no secret positions. However, they are not made public automatically. Work carried out in Parliament is accessible in the form of reports but deliberations are not open to observers. Restricted documents are not circulated. In
practice, access to information is difficult; there are no real channels of information and distribution is done only on an \textit{ad hoc} basis. The same policy applies to Korea where press releases issued by the government or the permanent mission amount to the main channel of information.

— Among the \textit{developing countries} participating in the survey, the problem is aggravated by the lack of government resources. Generally, parliamentary discussions on \textit{WTO} matters are open to the public. In \textit{Guinea}, the meetings of the National Assembly are systematically broadcast. The government responds to questions and requests for information, where it sees fit, but practises document restriction.

— The Constitution of \textit{Guatemala} makes it possible to consult all acts of the Administration except for those related to national security. Delegation reports, the work carried out by the Parliament and all \textit{WTO} documents which reach the Administration are, therefore, available to the public, including restricted documents. However, the government does not publish such documents due to a lack of financial resources.

— \textit{Indonesia} underscores its efforts to educate the public in this area mainly through the organization of seminars, workshops or training courses.

In conclusion, with some exceptions, none of the countries surveyed really practise strict policies of transparency towards the public. In most cases, the best means of obtaining information is to contact the government directly on an informal basis. The government then decides whether or not it will honour the request. The only formal channel is through parliamentary debate. However, in certain countries the deliberations of parliamentary committees are not necessarily accessible. As in the case of the \textit{WTO}, this culture of secrecy perpetuates ignorance of the multilateral trading system and discourages civil participation.

It is essential to improve the transparency policy of States by allowing access to most government documents. Likewise, the creation of formal channels of information should be encouraged. This can be achieved through regular publication of summary records and work of the authorities. Increased financial support must be allocated to education and training in the countries of the South.

3. Other Ways of Participating

(a) The trade policy review mechanism

The \textit{WTO} regularly reviews the trade policy of its Member States. This mechanism reports to the General Council and is aimed at improving transparency in the trade policies and practices of the Members, through regular supervision. This encourages States to follow \textit{WTO} rules and disciplines more closely, and to honour their commitments. Reporting frequency is a factor of the economic strength of the country in question and reviews are carried out on the basis of a report by the government concerned and a \textit{WTO} Secretariat report. Discussion of these two reports are then held
at the WTO, at which time Members may request clarification from the country under discussion and recommend corrections to its trade policy. The reports are subsequently published.

In practice, trade policy review tends to become routine and runs the risk of losing its relevance. On one hand, governments are reluctant to have their trade policy criticized and the WTO Members are often inclined to trivialize this instrument. On the other hand, the Secretariat often does not have the time or necessary resources to draft a very detailed report and must often confine itself to a simple description of the trade policy.

One way of reviving the mechanism while increasing participation of civil society would be to involve NGOs in the process. Up until now, the opportunities for NGO contribution in this area have practically not been explored or exploited. Precedents exist in other international organizations such as in the Bretton Woods institutions.

Much has often been said about the need to establish, in the North and the South, the economic conditions necessary for sustainable development. In the case of the WTO, the social or ecological implications of the Agreements of the Uruguay Round could be brought to the fore. NGOs could also denounce those practices which were inconsistent or incompatible with the WTO and which influence sustainable development. Such participation in the trade policy review mechanism can significantly increase the quality of reports by highlighting certain awkward aspects. It would be an important NGO contribution and would encourage a certain level of debate at the WTO while stimulating the revival of a system which is inclining towards the routine. The operation of the trade policy review mechanism should be evaluated in five years. The idea of NGO participation should be introduced before this time to prove its merit.

(b) **Hearings**

In most instances, hearings are arranged by the Parliament which seeks, by these means, to acquire further information on specific subjects. Parliament invites the members of the government, and sometimes the private sector, and on these occasions creates an opportunity for NGOs to introduce their independent opinions into the discussion. The various parliaments, notably in Italy, the United States, Indonesia and Korea, among others, arranged hearings during the ratification of the Uruguay Round Agreements. In some cases (for example, Switzerland), it was possible for development NGOs to present their position and to propose recommendations.

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9 It is only in Switzerland that development NGOs have considered participation in the report submitted by the government concerned to the Secretariat.

10 This is especially true of consultation in International Monetary Fund (IMF) Article IV. In Switzerland, for example, the Swiss Coalition of Development Organizations participate in IMF consultation on exchange rate policy and the structural policy of its Member States.
(c) Participation in the national delegation

Another way in which NGOs could participate would be to have the status of expert or observer on a national delegation, especially for large meetings such as Ministerial Conferences. This would allow them to attend, and even to participate directly in WTO meetings. This practice is often allowed in other international forums such as UNCTAD. The first WTO Ministerial Conference will be held in Singapore in December 1996, and Swiss NGOs have requested permission to participate on the national delegation. Other NGOs, mainly in Europe, have also indicated their interest. The various national authorities are still undecided on this point. Members have indeed allowed private organizations to attend WTO meetings, but only the umbrella associations.

(d) Optional referendum

In Switzerland, the Agreements of the Uruguay Round were subject to an optional referendum. A group of environmental and agricultural organizations tried to oppose ratification by getting this decision to be put to the vote. However, they did not manage to get the 50,000 signatures necessary for the matter to be put to the people. During the adaptation of Swiss legislation to WTO rules, the necessary modifications were also subject to an optional referendum. However, no group of citizens tried to oppose it and put it to the vote.

Although it is impossible to make real claims in this way, there is none the less an effective system of sanctions which, in the final analysis, forces the authorities to foster greater involvement of civil society in the process of the trade policy development.

C. Assessment of the role of NGOs

At present it is difficult to evaluate the results of NGO activity. In the first instance, the WTO has only been in existence for two years and, up until now, it has primarily been busy acquiring the means to supervise the implementation of the Agreements reached in the Uruguay Round. According to one member of the Secretariat, most meetings have been devoted to organizational and administrative matters and the setting up of various bodies. In the second instance, it is the umbrella associations which are the most active in the WTO. Although there are many development, environmental and consumer-oriented NGOs in the countries of the North, only a small percentage of them deal actively with WTO issues. Most NGOs in the developing countries act mainly at the local level, whereas in the poorest countries, the population has more immediate concerns and is completely unaware of the existence of the WTO. Participation of civil society is usually very weak and limited to the umbrella associations, such as groups of farmers.

This assessment comes partly from the NGOs surveyed, but also from
representatives at the WTO in so far as they are sometimes better placed to determine the role that NGOs have actually played in decision-making and in the development of national and multinational policy. A few extracts and summaries of these discussions follow:

— The *European Union* assessment by the Transnational Institute (TNI): The work of the NGOs at the European level has contributed especially to the opening up of the WTO to informal discussion and information exchange with civil society. Furthermore, the NGOs have played a role in the discussion of the European Union’s banana regime. Mention should also be made of campaigns led against subsidized overproduction of European beef and its effects on developing countries where it is dumped.

— In the *United States*, assessment was made based on a discussion with a representative of the USTR: The contribution of NGOs was especially striking during the discussions on the introduction of issues related to environmental protection at the WTO. In particular, they have played an important role in the decision to establish a Committee on Trade and Environment at the Marrakesh Conference. NGOs have also had a great influence on the U.S. position on transparency and the de-restriction of WTO documents.

— *Switzerland*, assessment by the Swiss Coalition of Development Organizations: NGO activity has been successful, particularly at the national level; they have convinced the government to set up an advisory sub-committee on the WTO, grouping members of Parliament, government representatives, various NGOs and interest groups. They have also secured written obligation that in WTO decisions relating to the countries of the South, the Swiss government will apply its principles of development co-operation. NGOs have also insisted on the revision of the Generalized System of Preferences in order to adapt it to the new conditions resulting from the Uruguay Round. They achieved an evaluation of the effects of the Uruguay Round on developing countries, and promoted the granting of a 100 million Swiss franc credit for “post-Uruguay Round” measures for the benefit of developing countries and the least-developed countries in particular.

— *Spain*, assessment by a member of the permanent delegation at Geneva: In the European Union, proposal for the reform of Article XX of the GATT,¹¹ in which Spain played a very active role, the NGO position and the interests of environmental protection agreements were taken fully into account.

— *Bangladesh*, assessed by UBINIG (Policy Research for Development Alternative): The role of NGOs is evident in the area of education and in their ability to stir the public’s interest in WTO matters. This has led to an improvement of the government’s policy on transparency. Tremendous work has also been carried out on the implementation and problems incurred under obligations pursuant to the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

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¹¹ This Article defines the general exceptions to the GATT provisions.
India, assessment by the Consumer Unity and Trust Society: NGOs have been able to exert effective pressure on the government and Parliament through the arrangement of briefings, seminars and the publication of articles in influential magazines.

In the case of other countries, most persons interviewed indicated that NGOs had not obtained particularly tangible results, but that they contributed to discussions and enabled the identification of interests of concern to civil society.

A great degree of accountability is deemed necessary to increase and intensify the role of the NGOs in the development of the multilateral trading system. It is only through the practice of a strict policy of information, consultation and systematic involvement on the part of civil society, both at the WTO and at the national level, that it will be possible to achieve this.

IV. THE ROLE OF PARLIAMENT

As the representative of the people, Parliament constitutes one of the principal agents of accountability. One of the criticisms often levelled at the WTO relates to the lack of participation of the various Parliaments. The fact that they were barely involved in the development of negotiating mandates during the Uruguay Round, and that they are not sufficiently well informed on the effects of the WTO, is particularly reproachable. Another criticism is that parliamentarians are authorized to participate only during some ministerial meetings as observers.

The WTO has no mechanism for ensuring the participation of Parliaments in the decision-making process. In order to evaluate their role, an examination of the various national procedures would be necessary. In a general fashion, different levels of intervention can be identified. In the first place, Parliament may play a role in the formulation of the negotiating mandate or the binding guidelines for the delegation. In the second place, it has to be determined to what extent Parliament is briefed and follows the work of the WTO. Does it participate in the national delegation? Do the competent parliamentary committees frequently address issues related to the WTO? Lastly, what is the procedure for ratification and what is the role of Parliament in decision-making? Must Parliament give its approval when the General Council or the Ministerial Conference decide on an amendment, waiver or collective interpretation?

The power of Parliament varies considerably from one country to another, but with a few exceptions, it can be observed that it plays only a very marginal role in the orientation of the multilateral trading system. Given the number of countries included in the study, it would be impossible to describe in detail the procedures in force in each of them. A selection of the most revealing cases follows:

In the United States, the Congress plays a vital role because, constitutionally, it grants the Administration the authority to enter into negotiations. On such occasions, it issues a series of guidelines which are binding upon the negotiators. There is,
moreover, close collaboration and quite frequent consultations between the USTR and the Congress, in particular, the Ways and Means Committee and the Senate Finance Committee. Most of the topics related to trade policy are discussed in that forum. The issues arising in the sphere of the WTO were the question of intellectual property rights, the implementation of Agreements resulting from the Uruguay Round, trade and the environment and tariff preferences, among others. The members of the parliamentary committees follow the work of the WTO closely and often travel to Geneva. Members of the Congress sometimes participate on the national delegation at Ministerial Conferences. Lastly, the Congress arranges regular hearings to which members of the Administration and the private sector are invited. In general, the ratification procedure involves the Congress only when the modification of a U.S. law is required. In the case of an amendment, the approval of Congress is necessary if it implies substantial changes in obligations. In the case of the Uruguay Round Agreements, the Congress used the fast-track negotiating authority to open negotiations. Once concluded, the Administration presented the results as a “package” that Congress was to either accept or reject en bloc.

In Europe, the common commercial policy is developed in Committee 113 (Committee on External Trading Policy), COREPER (Committee of Permanent Representatives) and the Council of Ministers. Parliamentary power diminishes in importance since trade policy is not devised at the national level. Even if the Parliament plays a role in the formulation of the position of a Member State, that position will not necessarily be adopted in Brussels when trade policy is being formulated. The European Parliament cannot issue guidelines or participate in the elaboration of a mandate since it does not have the right of initiative, which is reserved for the Commission. The REX Committee of the Parliament which handles WTO matters, can nevertheless draft reports and formulate recommendations. It can also pose questions on the EU position during negotiations but it does not have binding authority. The European Commission keeps the Parliament up to date in so far as the Parliament participates in ratification. The results of negotiation are approved by the Council of Ministers and ratification is carried out by the European Parliament and national Parliaments to the extent that the WTO covers subjects, which are within the competence of Brussels and others which remain national competences (Trade-Related Investment Measures, TRIPS), even though they might have been negotiated by the Commission at the WTO.

Since the accession of Austria to the European Union, the role of Parliament has been strengthened. It can now develop binding directives for the negotiators which are taken up in the Austrian position presented at Brussels. Parliament is regularly briefed on WTO activities and receives all the reports of the relevant meetings. Parliament restricts itself to the ratification of WTO Agreements which are not within the competence of the common commercial policy. The same applies for the approval of possible amendments.
In France, Parliament does not usually issue guidelines or participate in the definition of a negotiating mandate, only at the government's initiative, that is, when the government decides to open the debate. Pursuant to Article 88.4 of the French Constitution, as modified in 1993, all EU legal instruments, including amendments and WTO accessions, must be reviewed by a parliamentary committee. Although an accompanying legal opinion is not necessary, the government has never executed a legal instrument without the opinion of Parliament. At worst, the French delegation at Brussels abstains or allows itself to be outvoted. According to the representative interviewed, it is in the government's interest to keep Parliament regularly informed throughout negotiations particularly if, in the final analysis, its approval is required. Parliament may keep itself informed through the competent Minister for those matters of current interest or through the European Affairs delegation by going to Geneva to follow the course of events.

In Germany, since the competence in external trading policy was delegated to the European Union, the Bundestag has been involved only indirectly in the development of WTO policy. It does not formulate guidelines. However, developments in the multilateral trading system are discussed in the various parliamentary committees and during plenaries. There are Bundestag external, European and economic committees. The situation in other European countries such as Belgium, the Netherlands, the United Kingdom and Spain is rather similar to that of Germany. Parliament does not issue binding guidelines and does not participate in the development of the negotiating mandate. It is constantly briefed, particularly through the parliamentary committees, and can at any time call on the responsible Ministry to obtain additional information, usually through parliamentary consultation. Parliament plays a further role during ratification. Most European Parliaments approved the results of the Uruguay Round as a whole, and must ratify all Agreements flowing from the competence of the European Union. Hypothetically, if an amendment, which was other than purely formal, to one of the WTO Agreements should arise, the national parliament can also give its approval.

In Japan, Parliament does not give a clear mandate to the government but provides some guidelines. However, its opinion is not binding. Parliament is constantly briefed and can react at any given moment by posing questions. Once negotiation has been completed, the text is put before it, at which point it hands down its decision and, if accepted, the text will then be ratified by the Emperor who, according to the Constitution, must act on the opinion of Parliament. Parliament also decides on WTO amendments.

In Switzerland, Parliament plays no role in the formulation of guidelines and is not involved in the definition of negotiating mandates. The reason is that this falls within the competence of the executive body, the Federal Council. However, it follows the work of the WTO, in particular through two parliamentary committees: the Committee on Foreign Policy and the Committee on the Economy and Fees.
Throughout the negotiating process, Parliament is able to question the government, as it did on several occasions during the Uruguay Round. In addition, it arranged hearings on the WTO. In 1994, the Swiss government embarked upon a procedure of consultation for Parliament and any other organizations or persons concerned. For this purpose, a document of some four hundred pages was circulated, giving a detailed description of the Uruguay Round negotiations. The Federal Office of External Economic Affairs had previously published a popularizing work aimed, inter alia, at Parliament. The Swiss Parliament also intervenes in the ratification of certain amendments, in particular in cases involving an internal legal modification or new international obligations. As a general rule, depending on the scope of waivers or collective interpretations, it is not necessary to obtain parliamentary ratification.

Let us clearly state, however, that although Parliament may be extensively informed of the result of negotiations, the same cannot be said for the negotiating phase. In the annual reports on the government’s foreign policy, the chapter on the Uruguay Round devotes on average only approximately ten pages on the status of negotiations on the three-hundred to six-hundred pages, which is the usual size of this type of document.

In Indonesia, each department concerned reports regularly to Parliament on the work of the WTO. Several parliamentary committees deal with these topics. Parliament periodically arranges hearings to supplement its information. It can also question the government, which sometimes invites members of Parliament to follow ongoing negotiations. In a general manner, one can observe the Indonesian Parliament’s lively interest in WTO matters. Parliament formulates binding guidelines for negotiators. Lastly, Parliament intervenes further during the ratification of all Agreements negotiated at the WTO and must give its approval for amendments.

In Honduras, Parliament intervenes only indirectly, through the approval of the budget and during the presentation of the annual report by the delegation. There is no parliamentary committee which regularly discusses the WTO. The government informs the Parliament if its approval is required in the long term. Although Parliament may often be invited to participate in negotiation and has the possibility to call on the Minister of the Economy for additional information, it deals very little with WTO issues. This can be explained partly by the number of other pressing issues it has to confront. For ratification, Parliament restricts itself to cases in which modification in national legislation is required. Broadly speaking, this practice is found, in most countries of the South, notably in Sri Lanka, Mexico, Nicaragua, Guatemala and Uganda. In the case of Bangladesh, it appears that the government might have signed the Agreements of the Uruguay Round without prior discussion in the country’s Parliament. In India, the Constitution provides that the Government of the Union can become party to an international treaty without consulting the Parliament or states.
Finally, the Parliament in Guinea is quite young. It held its first session in October 1995. Up until the present, it has played no role in the formulation of guidelines, or in the definition of the mandate for negotiators. It is neither briefed on, nor involved in developments in the multilateral trading system. It was the Minister of Trade who signed the accession of Guinea to the WTO, on behalf of his Government.

Generally speaking, it must be pointed out that the various national Parliaments play only a very marginal role in the orientation of the multilateral trading system. With the exception of the United States, where the Congress is effectively involved in discussions on WTO matters, Parliaments do not really have the means to exert a perceptible influence. In the majority of cases, Parliaments participate neither in the development of the negotiating mandate nor in the formulation of guidelines. In fact, Parliament is often informed only at the end of negotiations, and is not seriously involved throughout the process. Some Parliaments attend ministerial meetings, but very rarely do they attend the day-to-day WTO meetings. In the countries of the South, Parliaments hardly participate in the formulation of negotiating positions. They also have more urgent concerns, and very little time, resources or information.

In WTO decision-making, although Parliaments in most cases have a say in amendments to a WTO Agreement, they do not have a voice in questions concerning waivers, collective interpretations or any other decisions which lie exclusively within the competence of governments.

Although ratification and, consequently, the final decision, rests with Parliaments, it is noteworthy that in most cases, these decisions have been taken *en bloc*. It is therefore impossible to ratify only a part of the Agreements negotiated or to make reservations. The Agreements of the Uruguay Round, however, have weighty consequences and require a whole series of modifications in national legislation. The WTO is gradually reducing customs tariffs. Development of legislation on antidumping and protection of intellectual property is required. States are obliged to give up some of their subsidies and support to national production. The WTO established provisions on non-tariff barriers, sanitary and phytosanitary measures, and encourages harmonization, at the international level, of qualitative norms, safety standards and rules of origin. All these decisions were previously the prerogative of the legislative power of Member States. Parliament loses some of its function as legislator in so far as it is bound to accept what the diplomats and the government have negotiated during a complex process of reciprocal concessions. National policy is increasingly being determined at the multilateral level.

In the case of Member States, this immense gap in democracy can only be filled by deeper parliamentary involvement. The increased participation of Parliaments in WTO affairs is acquired through the exchange of regular and detailed information, contribution to the definition of the mandate for the negotiations, and appropriate mechanisms providing guidelines for negotiators.

In an era which bears the hallmark of globalization and growing economic liberalization, most of the major problems facing States are resolved only at the
international level. WTO policy is one example. In Switzerland, the Secretary of State and Director of the Federal Office for External Economic Affairs, Franz Blankart, considers that the deficit in democracy could eventually be resolved through an International Parliament. To this end, he recommends, the strengthening of the European Parliament and wonders whether the GATT would not have need for such a Parliament.\footnote{Taken from a conference at Thun, Switzerland, 26 May 1993, entitled Réflexions stratégiques sur la politique économique extérieure (Reflections on strategy for external economic policy).}

We could well imagine the establishment of a WTO Parliament composed of parliamentary representatives of the Member States. This would guarantee a direct line with national Parliaments and would tackle an entire series of purely international problems. Precedents in this respect include the North Atlantic Treaty Organization Assembly and the Joint Assembly under the Lomé Convention.\footnote{See van der Stichele, 1994.}

V. NATIONAL DELEGATIONS
A. INSTRUCTIONS TO NATIONAL REPRESENTATIVES

When discussing instructions, one is automatically drawn into an examination of the procedures for the development of the bargaining position of governments. Trade policy and the negotiating positions that the national representatives must defend are defined by central administrations, usually following consultation with private businesses, professional umbrella organizations, agriculturists, or NGOs.

Although there is no rigid policy on the development of negotiating positions, most States formulate instructions during a process of interministerial co-ordination. This process usually includes the Ministry responsible for trade, but it often proves necessary to involve the Ministries of agriculture, environment, services, development co-operation, transport, rules of origin, health and others.

— In Japan instructions given to national representatives go through the Ministry of Foreign Affairs which is responsible for ensuring prior co-ordination among the various Ministries concerned. Such co-ordination is carried out by the Ministry of Economic Affairs in Guatemala or by the Ministry of Commerce in Bangladesh.

— In Switzerland, the Federal Council develops the broad lines of Swiss policy. These directives are “translated” by the WTO/International Trade Department of the Administration, which reports on the Federal Office of External Economic Affairs. It is on the basis of these directives that the Department adopts a position. For example, during the WTO ratification, the Federal Council established a directive requesting that, in the adoption of positions on developing countries at the WTO, Switzerland would take into consideration the principles and objectives of its development policy established in the Federal Law on development co-operation and international humanitarian aid (see Annex 4). Other offices deal with the WTO as required. The final negotiating position is established in consultation with the
offices concerned and the WTO/International Trade Department until consensus is achieved.

The process of co-ordination can sometimes be relatively complex as in the United States, where instructions to the delegation come, on one hand, from the Administration through the USTR, and on the other hand, from the Congress which authorizes negotiation through the issue of guidelines. The Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC) are both administrated and chaired by the USTR and represent the central pillar of policy co-ordination. The USTR assigns responsibility for the analysis of topics to the TPSC, which is composed of, among others, officials of the civil service and more than sixty sub-committees in various fields. If consensus is not achieved in the TPSC, or if there is a matter of particular importance, the file is passed to the TPRG. Member agencies of the TPSC and the TPRG consist of the Departments of Commerce, Agriculture, Treasury, Labor, Justice, Transportation, Energy, Health and Human Services, Office of Management and Budget, the Environmental Protection Agency, among others. The third tier participating in this process is the National Economic Council (NEC) chaired by the President, and composed of the Vice-President, the Secretaries of State and representatives of various administrative departments. The NEC reviews memorandums from the TPRG and controversial issues or those which are particularly important. As seen earlier, the Congress and the private sector remain involved in the entire process. Annex 5 gives a more detailed description of the mechanisms in force. Once a policy has been established, the USTR is responsible for issuing instructions to its representatives in Geneva.

The European Union presents a slightly special case. As a customs union, it has a common external trade policy and customs tariff. Pursuant to Article 113 of the Treaty Establishing the European Union, Member States transfer their national competences in the field of foreign policy to the European level (see Annex 6), which is defined in Brussels. During negotiations, for example, the Commission submits a mandate proposal to the fifteen Member States after consultation and co-ordination in the various departments (DG-I, External Economic Relations; DG-VI, Agriculture; DG-IV, Competition Policy; DG-XI, Environment—to name a few). Then the negotiating positions are decided between Member States in Committee 113, COREPER and the Council on General Affairs. Before intervening at the WTO, there is a second round of sur place co-ordination held in Geneva. It groups mainly the representatives of the fifteen Member States and the Commission. The delegation of the European Commission at Geneva is responsible for representing the interests of Member States, which also have permanent representation in Geneva. This is because both the European Union and its fifteen

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14 We should add, however, that with the exception of the WTO fields of activity, this competence is no longer exclusive and Member States, in theory, keep certain competences, particularly in the area of services and investments. They have nevertheless admitted that the Commission is their only spokesperson at the WTO. There are also some "shared" competences between the EU and its Member States, for example, in the fields of health and the environment.
members are contracting parties at the WTO. The national representatives meet in various committees and councils and are frequently assisted by experts sent from the capital. The representatives may intervene at any time during the sessions where the Commission speaks on their behalf to keep developments on course and faithful to the preliminary discussions.

Nationally, positions are adopted in a relatively similar manner between the Members of the European Union.
— In Belgium, the national position is the result of co-ordination in the Steering Group composed of representatives of the Ministry of Foreign Affairs and External Trade, the Federal Ministry of Public Health and the Environment, the three regional administrations for the environment, the Federal Ministry of Economic Affairs, the Federal Ministry of Agriculture and the three regional entities for external trade. The delegation in Geneva is informed of the positions established in Brussels.
— In France, positions are adopted by the General Secretariat of the Interministerial Committee for the Co-ordination of Community Economic Policy (SGCI). The Secretary-General of the SGCI is the Prime Minister’s adviser for European Affairs. The SGCI organizes meetings on all topics relating to the Community with the Ministries concerned. In the case of the WTO, these meetings bring together the Department of External Economic Relations (DREE) which reports to the Ministry of External Affairs and the Ministry of Foreign Affairs and other Ministries as required. Instructions from Paris are sent simultaneously to Brussels and to the delegation at Geneva.
— In the Netherlands, there is a special unit of approximately eleven persons working in the capital in the field of trade policy with a strong emphasis on WTO matters. Other Ministries are also working indirectly on the WTO through their sphere of activity, for example, rules of origin, agriculture, environment, and so on. Instructions from the capital are sent to Brussels by the Ministry of Economic Affairs following consultation between the various Ministries concerned.

In general terms, whether we are looking at Germany, the United Kingdom, Spain or Austria, the principle is more or less the same: co-ordination takes place between the various Ministries and instructions are then conveyed to Brussels and Geneva at the same time.

B. THE RESPONSIBLE AUTHORITY

Once a position has been established, it is defended at the WTO. Representatives are appointed by the government.

The Commission’s delegation is appointed by the administration of the European Commission, which reports to the Council of Ministers. The members of the Council, in turn, report to their respective national Parliaments. The national representatives of the Member States of the Union are appointed by the Minister of Foreign Affairs.
(United Kingdom, Belgium), the Minister of Economic Affairs (Germany, Austria) or by agreement between various concerned Ministries (the Netherlands). They are accountable only to the government. Theoretically, the delegation from France is accountable only to the SGCI which is responsible for the distribution of the summary records to the interested persons. In practice however, the delegation has privileged ties with the DREE and usually has its reports delivered to the Ministry of Foreign Affairs, the permanent representative of France to Brussels, and others on very specific subjects. In England, the delegation is accountable to the Ministry of Trade and Industry, which is itself accountable to various parliamentary committees.

In Indonesia, the President directly appoints the ambassador to the Permanent Mission, and the other representatives are appointed by the Ministry of Foreign Affairs following consultation between the various Ministries concerned. The delegation is accountable to the Ministry of Foreign Affairs. In Bangladesh, the Head of State appoints the representatives upon the advice of the Ministries concerned (Ministry of Commerce, Ministry of Foreign Affairs). Representatives are accountable to the Ministry from which they come, and it is this Ministry which circulates information. In the United States, the representatives are appointed by the office of the USTR. According to the representative who was interviewed, national representatives are accountable to the government, the Parliament and civil society.

In summary, representatives are appointed exclusively by the Executive. They may originate in different Ministries and have very diverse training and backgrounds; in many instances, they are specialists or experts in a specific field.

C. Capacities for Multilateral Trade Negotiation

The Agreement Establishing the WTO provides in precise terms that each State has one vote at the WTO. In theory, all Members are equal and carry the same weight at meetings, but this equality is in appearance only. Without harking back to the questions of influence based on the role a country plays in world trade, it is obvious that all States do not have the same capacities for negotiating multilateral trade. The following will attempt to highlight the inequalities between the means available to States in defence of their commercial interests, in their capitals and in terms of their representation at Geneva.

1. In the Capital

At the national level, the WTO involves the development and implementation of new rules conforming to Uruguay Round obligations. On the multilateral level, the WTO prescribes the notification of measures undertaken and follow-up on relations with trading partners. Active participation in the developments of the multilateral trading system therefore requires an efficient central administration. In practice, the
team upon which a permanent representative can count for the issuing of instructions varies greatly from one State to another.

There are about two hundred persons working in the general field of trade policy at the USTR office in Washington. In Korea, the Ministry of Foreign Affairs has established a special division on trade organizations which treats mainly the WTO. Other Ministries such as the Ministry of Economic Affairs have a similar division. In total, the number of civil servants is estimated at one hundred. By way of contrast, in Honduras, the unit on trade policy in the Ministry of External Trade has only ten to twelve persons, of which three to four have received outside training on the WTO. In Guatemala, fifteen persons deal with international trade which also includes the Central American free trade area, and NAFTA. In Sri Lanka, only four persons work exclusively on the WTO, and in Nicaragua, there are only three persons working at the technical level.

2. In Geneva

Representation at the WTO is usually handled by a diplomatic mission in Geneva, occasionally with an ambassador especially accredited to the WTO. The Uruguay Round Agreements have never specified the number of representatives which States can have. It is up to each country to determine for itself the composition of its delegation according to its means and priorities. In practice, a relatively large delegation at Geneva is considered necessary if a country intends to participate actively in ongoing negotiations and to attend meetings of the various WTO bodies. Meetings are held daily and often simultaneously. Many permanent representatives hold the view that there should be on average four to five diplomats to report on all the meetings. On the other hand, it is often necessary to call on specialists, especially during negotiations, in view of the fact that specific aspects of certain subjects are tackled. All countries do not, however, have identical delegations in Geneva. In fact, this is far from being the case.

While the office of the USTR at Geneva may have more than twenty representatives and national experts, Nicaragua has only one representative at the WTO out of the three persons at the Mission, and its capital is not in a position to send experts because of a lack of resources. One-half of the Permanent Mission of Japan, that is about twenty persons, deals exclusively with WTO matters and they have the regular support of experts from Tokyo. Bangladesh, on the other hand, has only one representative in Geneva to handle WTO matters, under the supervision of the Ambassador. This same

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15 As a result of the movement towards regional economic integration—in the form of a customs union and free trade area—as well as political and geographic arrangements, groups of countries may be represented by a single spokesperson at the WTO. This applies not only to the European Union; the Member States of the GATT which belong to the Association of South-East Asian Nations (ASEAN)—Brunei Darussalam, Indonesia, Malaysia, Philippines, Singapore and Thailand—have not yet attained the same degree of integration but due to the fact that they share a number of common interests, they can often coordinate their position and express it with one voice. Among the other countries which sometimes present unified positions are the Nordic countries, especially in the CTE, the Latin American Economic System (LAES) and the group of African, Caribbean and Pacific countries (ACP). We should also mention a rather well-known alliance within the framework of the Uruguay Round, centred on a similarity of commercial interests, rather than geographic identity, the Cairns group of countries. It includes countries of the North, the South, and Eastern Europe which export agricultural products.
person is also responsible for other institutions such as UNCTAD and the International Trade Commission. The delegation of Bangladesh rarely uses national experts and such requests can be granted only once in five cases, chiefly because of a lack of funds. During the negotiations of the Uruguay Round, Bolivia had one single representative, while Switzerland had around twenty experts on international trade. Other countries, such as Guinea and Mozambique, simply have no permanent mission in Geneva.

In the case of Sierra Leone, a special mandate has been given to a representative of the NGO known as the Foundation for International Environmental Law and Development (FIELD) which promotes that country’s interests in the CTE. Because of a lack of technical data in the capital, this person receives no instructions but provides reports to the Sierra Leone government. It is the only representation this country has at the WTO.

Until recently, Uganda did not have a permanent mission in Geneva. Ugandan interests were formerly handled through the group of African diplomats based in Geneva. On rare occasions, representatives from the Ministries of Commerce and Industry, Foreign Affairs and Finance travelled from the capital. It is due to financing by the City of Geneva that it has been possible for Uganda to open a permanent mission. At present, there is only one person, an Ambassador, to cover all the international organizations in Geneva, but the mission should grow in the long term.

Contrary to the situation in the developed countries, most countries in the South are not in a position to follow the activities of the WTO in their entirety, and are forced to make choices and to define priorities. They emphasize their lack of resources and personnel in Geneva and in the capital in order for them to fully defend their interests and participate actively in the orientation of the multilateral trading system.

In order to allow the countries of the South to negotiate on an equal footing with the North, it is imperative to strengthen, at the national level, the institutional capacity of the least developed countries, and to train legislators and officials in the results of the Uruguay Round. As a result of the expansion of the WTO’s field of activity, increased technical co-operation is considered necessary, especially in favour of the least developed countries. The WTO Secretariat, among others, should continue, and intensify its work in the organization of seminars, workshops and technical missions at the national and regional levels. A “universal house” should be established in Geneva where any country can have facilities for a permanent delegation. It would also be desirable to create a training/support institute on the results of trade negotiations.

VI. CONCLUSIONS AND LESSONS

This study was not intended to be exhaustive or to present in detail the different practices in the area of accountability, but rather it has sought to highlight the most meaningful cases from among the countries surveyed. Such a selection should provide leads in research on increased accountability, both in the WTO itself and in the Member States.
Since the negotiations of the Uruguay Round, the new World Trade Organization touches on most aspects of international trade. The Agreements will have, in the medium and long term, a decisive impact on international exchanges and, in particular, on the development of the countries of the South, for whom international trade constitutes by far the largest source of foreign currency income. The stakes are therefore enormous and affect practically all sectors of society.

When a State ratifies the WTO Agreements, it implies a series of modifications of its national laws. Parliament is, however, scarcely involved in WTO discussions. In the majority of cases, it is informed only at the end of negotiations and cannot truly participate throughout the process. At ratification, it finds itself forced to accept or reject the Agreements of the Uruguay Round as a whole. Consequently, we could speak of a deficit in democracy. It can be seen, in particular, that the powers of the Parliament pass more and more into the hands of the governments and negotiators. Trade policy is increasingly being determined at the multilateral level. Because of the specific topics dealt with at the WTO, one could just as well speak of “technocratization and bureaucratization” of trade policy.

Civil society has little or no involvement in these developments. By claiming that the WTO should remain a purely governmental forum, States exclude the direct participation of NGOs and economic sectors. They perpetuate the culture of secrecy which was already present at the GATT. This bias against the accountability can only be redressed through the establishment of appropriate and effective mechanisms of collaboration with civil society, both at the multilateral and national level. It is far from being the current state of affairs. With few exceptions, States practise no policy of transparency and consultation which permits effective NGO participation. The mechanisms of the WTO are inadequate and do not guarantee free access to information. The cleft between governments and those they represent is growing ever wider.

In the developing countries, there is also a widespread deficit in democracy but problems of accountability should be approached in the context of development. Even more so since several of the countries surveyed belong to the least developed countries. The lack of awareness, more immediate concerns of their people as well as numerous other problems facing their governments and Parliaments, and the feeble capacity for negotiation partly explain the deficiencies in accountability. However, it is nowadays widely accepted that development must be based on the application of the principles of good governance and accountability. The following ten guidelines for the improvement of accountability should be explored in the future, at both the WTO and the national levels.

A. AT THE MULTILATERAL LEVEL

1. Regular consultations between the WTO and NGOs; observer status at least in the CTD and the CTE; and NGO participation in dispute settlement.
2. NGO participation in impact studies on development and the environment and the establishment of an expert panel on trade and sustainable development.
3. Automatic and rapid access to information for NGOs and a policy of greater transparency in multilateral trade policy and its application.
4. The creation of a WTO Parliament with parliamentary representatives from all Member States, in order to establish a direct link with national parliaments.
5. Greater effort in technical assistance to developing countries to equip them with adequate capacities for negotiation.

B. AT THE NATIONAL LEVEL

7. NGO participation in the trade policy review mechanism to bring differing points of view into the analysis and policy proposals.
8. Granting of observer or expert status to NGOs in national delegations during WTO meetings and conferences.
9. Closer involvement of Parliament in negotiations by providing regular briefings and by allowing its participation in the negotiating mandate and establishment of guidelines.
10. Strengthened institutional capacity of developing countries and their negotiating capacities in Geneva.

Annex 1

GUIDELINES FOR ARRANGEMENTS ON RELATIONS WITH NON-GOVERNMENTAL ORGANIZATIONS

1. Under Article v:2 of the Marrakesh Agreement establishing the WTO “the General Council may make appropriate arrangements for consultation and co-operation with non-governmental organizations concerned with matters related to those of the WTO.”

2. In deciding on these Guidelines for Arrangements on Relations with Non-Governmental Organizations, Members recognize the role NGOs can play to increase the awareness of the public in respect of WTO activities and agree in this regard to improve transparency and develop communication with NGOs.

3. To contribute to achieve greater transparency Members will ensure more information about WTO activities, in particular by making available documents which would be de-restricted more promptly than in the past. To enhance this process the Secretariat will make available, on an on-line computer network, the material which is accessible to the public, including de-restricted documents.
4. The Secretariat should play a more active role in its direct contacts with NGOs which, as a valuable resource, can contribute to the accuracy and richness of the public debate. This interaction with NGOs should be developed through various means such as, inter alia, the organization on an ad hoc basis of symposia on specific WTO-related issues, informal arrangements to receive the information NGOs may wish to make available for consultation by interested delegations, and the continuation of the past practice of responding to requests for general information and briefings about the WTO.

5. If chairpersons of WTO councils and committees participate in discussions or meetings with NGOs it shall be in their personal capacity unless that particular council or committee decides otherwise.

6. Members have pointed to the special character of the WTO, which is both a legally binding intergovernmental treaty of rights and obligations among its Members and a forum for negotiations. As a result of extensive discussions, there is currently a broadly held view that it would not be possible for NGOs to be directly involved in the work of the WTO or its meetings. Closer consultation and co-operation with NGOs can also be met constructively through appropriate processes at the national level where lies primary responsibility for taking into account the different elements of public interest which are brought to bear on trade policy-making.


Annex 2

PROCEDURES FOR THE CIRCULATION AND DE-RESTRICTION OF WTO DOCUMENTS

Decision adopted by the General Council on 18 July 1996

The General Council decides to adopt the following procedures with respect to the circulation and de-restriction of documents:

1. Documents circulated after the date of entry into force of the Marrakesh Agreement Establishing the World Trade Organization (hereinafter referred to as “WTO Agreement”) in any WTO document series shall be circulated as unrestricted with the exception of documents specified in the attached Appendix, which shall be circulated as restricted and subject to de-restriction, or consideration thereof, as provided. Notwithstanding the exceptions specified in the Appendix, any document that contains only information that is publicly available or information that is required to be published under any agreement in Annex 1, 2 or 3 of the WTO Agreement shall be circulated on an unrestricted basis.

2. Notwithstanding the exceptions to paragraph 1 set forth in the Appendix,
   (a) any Member may, at the time it submits any document for circulation, indicate to the Secretariat that the document be issued as unrestricted; and

1 A copy of this decision shall be transmitted to the bodies established under the Plurilateral Trade Agreements for their consideration and appropriate action. The decision does not, furthermore, cover documents outside of a formal document series, such as a submission to a dispute settlement panel, or an interim report of a dispute settlement panel submitted to the parties thereto.

2 In adopting these procedures, the General Council took note that Members attached particular importance to the restricted nature of documents so designated, and that individual governments should proceed accordingly in their handling of such documents.

3 The terms “circulation” and “circulated” when used in this decision shall be understood to refer to the distribution by the Secretariat of documents to all WTO Members.
(b) any restricted document circulated after the date of entry into force of the WTO Agreement may be considered for de-restriction at any time by the Ministerial Conference, the General Council, or the body under the auspices of which the document was circulated, or may be considered for de-restriction at the request of any Member.

3. Requests for consideration for de-restriction shall be made in writing and shall be directed to the Chairman of the Ministerial Conference, the General Council or the relevant WTO body. Such requests shall be circulated to all Members and placed on the agenda of a forthcoming meeting of the body concerned for consideration. However, in order to preserve the efficiency of work of the body concerned, the Member concerned may indicate to the Secretariat that it circulate to Members a notice advising them of the documents proposed for de-restriction and the date proposed for de-restriction, which shall normally be sixty days after the date the notice is circulated. These documents shall be de-restricted on the date set forth in the notice unless, prior to that date, a Member notifies the Secretariat in writing of its objection to the de-restriction of a document, or any portion of a document.

4. The Secretariat shall prepare and circulate a list of all documents eligible for consideration for de-restriction, indicating the proposed date of de-restriction, which shall normally be sixty days after the circulation of the list. These documents shall be de-restricted on the date set forth in the notice unless, prior to that date, a Member notifies the Secretariat in writing of its objection to the de-restriction of a document, or any portion of a document.

5. If a document considered for de-restriction is not de-restricted because of an objection by any Member, and remains restricted at the end of first year following the year in which an objection was raised, the document shall be considered for de-restriction at that time.

6. The Secretariat will circulate periodically (e.g. every six months) a list of newly de-restricted documents, as well as a list of documents remaining restricted.

7. In the light of the experience gained from the operation of these procedures and changes in any other relevant procedures under the WTO, the General Council will review, and if necessary modify, the procedures two years after their adoption.

Appendix

(a) Working documents in all series (i.e. draft documents such as agendas, decisions and proposals, as well as other working papers, issued as "-/W/-" documents in a particular series), including documents in the Spec/- series.

Such documents shall be de-restricted upon the adoption of the report or of the decision pertaining to their subject-matter, or considered for de-restriction six months after the date of their circulation, whichever is earlier. However, working documents relating to balance-of-payments consultations, the Committee on Market Access, the Committee on Trade and Development and the Trade Policy Review Mechanism, shall be considered for...
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de-restriction at the end of each six-month period. All background notes by the Secretariat, however, shall be considered for de-restriction six months after the date of their circulation.

(b) Documents in the SECRET/- series (i.e., those documents relating to modification or withdrawal of concessions pursuant to Article XXVIII of the GATT 1994).

Such documents shall be de-restricted upon completion of the Article XXVIII process (including such process initiated pursuant to Article XXIV:6) through certification of the changes in the schedule in accordance with the Decision by the CONTRACTING PARTIES to GATT 1947 of 26 March 1980 (BISD 27S/25).

(c) Minutes of meetings of all WTO bodies (other than minutes of the Trade Policy Review Body, which shall be circulated as unrestricted), including Summary Records of Sessions of the Ministerial Conference.

Such documents shall be considered for de-restriction six months after the date of their circulation.

(d) Reports by the Secretariat and by the government concerned, relating to the Trade Policy Review Mechanism, including the annual report by the Director-General on the overview of developments in the international trading environment.

Such documents shall be de-restricted upon the expiry of the press embargo thereon.

(e) Documents relating to working parties on accession.

Such documents shall be de-restricted upon the adoption of the report of the working party. Prior to the adoption of the report, any such documents shall be considered for de-restriction at the end of the first year following the year in which they were circulated.

(f) Documents (other than working documents covered by (a) above) relating to balance-of-payments consultations, including the reports thereon.

Such documents shall be considered for de-restriction at the end of each six-month period.

(g) Documents submitted to the Secretariat by a Member for circulation if, at the time the Member submits the document, the Member indicates to the Secretariat that the document should be issued as restricted.

Such documents shall be considered for de-restriction at the end of each six-month period.

(h) Reports of panels which are circulated in accordance with the provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

Such reports shall be circulated to all Members as restricted documents and de-restricted no later than the tenth day thereafter if, prior to the date of circulation a party to the dispute that forms the basis of a report submits to the Chairman of the Dispute Settlement Body a

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7 Documents circulated during the period January through June would be considered for de-restriction directly after the end of that period. Documents circulated during the period July through December would be considered for de-restriction directly after the end of that period.

8 Notwithstanding these provisions, budget working documents in the Spec/- series shall not be de-restricted.

9 Documents circulated during the period January through June would be considered for de-restriction directly after the end of that period. Documents circulated during the period July through December would be considered for de-restriction directly after the end of that period.

10 This provision will be subject to review at the time of review of the Dispute Settlement Understanding, and will be discontinued if there is no consensus on the matter.

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written request for delayed de-restriction. A report circulated as a restricted document shall
indicate the date upon which it will be de-restricted.\textsuperscript{11}


\textit{Annex 3}

\textbf{CANADA}

\textbf{INTERNATIONAL TRADE ADVISORY COMMITTEES}

\textit{Mandate and Structure}

The purpose of the advisory committee system is to provide a confidential, two-way flow of
information and advice between the government and the private sector on international trade matters.
The advisory committees, which report to the Minister for International Trade, ensure that the
government has the benefit of private sector views in its deliberations on international trade policy and
international business development issues, both bilateral and multilateral.

The advisory committee system has two principal components:

1. the International Trade Advisory Committee (ITAC) which deals with multi-sectoral or non-
sectoral matters related to international trade; and

2. Sectoral Advisory Groups on International Trade (SAGITS), which deal with international trade
issues related to specific industry sectors.

\textit{Membership—Appointment and Tenure}

Members are appointed by, and serve at, the discretion of the Minister for International Trade,
and normally serve for a period of two years. Members may be re-appointed for one or more additional
periods. Chairs may not serve for more than two consecutive terms.

Members are required to sign a security declaration undertaking to respect the confidentiality of
classified information provided to them by the government.

Members of the ITAC and SAGITS and any sub-committee they establish, serve in their individual
capacities, not as representatives of specific entities or interest groups.

Members should be Canadian citizens.

1. The International Trade Advisory Committee

The ITAC is comprised of approximately thirty-five members from the business, labour,
consumer, cultural, and academic communities. SAGIT Chairs are also members of ITAC. Membership
is broadly representative and respects regional, sectoral and demographic interests.

The ITAC has struck three task forces to complement the existing advisory committee system.

(i) The ITAC Task Force on Trade Policy examines domestic and international economic
factors, policies, programmes, practices, and trends that affect Canada's international
competitiveness. It makes specific recommendations on how Canada can best address these
issues within the multilateral trading system.

\textsuperscript{11} The following standard cover note will be placed on panel reports. "The report of the Panel on [name of
dispute] is being circulated to all Members, pursuant to the DSU. The report is being circulated as an unrestricted
document from [date] pursuant to the procedures for the Circulation and De-restriction of WTO Documents
[document number]. Members are reminded that in accordance with the DSU only parties to the dispute may appeal
a panel report, an appeal shall be limited to issues of law covered in the panel report and legal interpretations
developed by the panel, and that there shall be no ex parte communications with the panel or Appellate Body
concerning matters under consideration by the panel or Appellate Body."
(ii) The ITAC Task Force on International Business Development examines Canada's performance in the global economy and the challenges, plans and initiatives of both industry and government in promoting international business expansion. It makes specific recommendations on private/public sector co-operation to improve Canada's competitiveness using its combined resources to the best effect.

(iii) The ITAC Task Force on Trade and the Environment examines factors that affect the achievement and reconciliation of Canadian trade and environmental directives.

Each Task Force comprises members of the ITAC and SAGITS as well as representatives of industry, labour, business, academia, and environmental organizations.

2. Sectoral Advisory Groups on International Trade (SAGITS)

The current SAGITS are as follows:

(i) Advanced Manufacturing and Processing Technologies
(ii) Agriculture, Food and Beverage
(iii) Apparel and Footwear
(iv) Business, Professional and Education Services
(v) Cultural Industries
(vi) Energy, Chemicals and Plastics
(vii) Fish and Fish Products
(viii) Forest Products
(ix) Household Products
(x) Information Technologies and Telecommunications
(xi) Medical and Health Care Products and Services
(xii) Mining, Metals and Minerals
(xiii) Textiles, Fur and Leather
(xiv) Transportation Equipment
(xv) Transportation Services

The Minister may create or alter the SAGITS as required. Membership of each SAGIT is broadly representative of the specific sector, with the size and composition of each group depending on the individual sector. SAGITS are expected to provide advice on international trade matters related to their respective sectors.

Should a SAGIT member's sectoral affiliation change, the member must notify the Minister or the Trade Advisory Committees Secretariat. If the new affiliation is inconsistent with the representative needs of the SAGIT, the Minister may terminate the individual's membership.

Operation of the ITAC and SAGITS

(1) Meetings are called by the Chairs. The committees meet quarterly or as required. The Chair normally provides a brief written report on each meeting to the Minister.
(2) Members may not send substitutes to meetings.
(3) The ITAC, SAGITS, and the three ITAC Task Forces each report directly to the Minister.
(4) The Minister normally attends meetings of the ITAC, and such ITAC Task Force or SAGIT meetings as appropriate. Other Ministers, government officials, or private sector individuals may attend at the invitation of the Chair.
(5) Secretariat support is provided by the Department of Foreign Affairs and International Trade. The Trade Advisory Committee Secretariat is responsible for:
   (i) preparation and submission of agendas;
   (ii) notification and organization of meetings;
(iii) preparation and circulation of documents;
(iv) transmission of committee reports and recommendations, and correspondence to the Minister;
(v) liaison with other federal and provincial departments and agencies, and the private sector.

(6) The venue for meetings is established jointly by the Chair and the Secretariat. Chairs are encouraged to hold some of their meetings outside of Ottawa.

(7) A representative of the Secretariat must be present at all ITAC, ITAC Task Force and SAGIT committee meetings.

(8) Committees may commission private consultants to undertake studies of issues or matters of relevance to their activities. Where government funding is required in order to hire private consultants, proposals for contracts must receive the prior approval of the Minister and will be subject to Treasury Board guidelines.

(9) Members serve without remuneration. The government will pay for members' travel and/or a per diem for meals and accommodation. However, in light of government efforts to reduce spending, members are encouraged to cover all or part of their costs where possible.

(10) If a member misses three meetings in a year, the member is approached by the Secretariat to consider resigning.

Duties of the ITAC and SAGIT Chairs

The Chair will:

(i) schedule meetings and develop agendas in consultation with the Secretariat;
(ii) call and chair all committee meetings. If the Chair is unable to attend a meeting, he/she will designate an alternate;
(iii) represent the broad spectrum of views of committee members and submit the committee's view to the Minister.

The Chair may appoint an assistant to provide support for work with the committee. Such an assistant is subject to the same guidelines and procedures, including confidentiality, as members of the committees, but is not a member, i.e. may attend the meetings but should refrain from active participation.

Sub-Committees

Committees may form sub-committees to review special issues. The formation and tasking of sub-committees is the responsibility of the Chair of the parent committee, in consultation with the Secretariat.

Sub-committee Chairs are responsible for advising the Secretariat of scheduled and proposed sub-committee meetings.

Sub-committee members may be selected from the parent committees. If the Chair of a sub-committee deems it necessary and advisable to invite non-members to participate at a meeting, the participation of such non-members should be arranged through the Secretariat.

The Chair of the parent committee shall be an ex-officio member of all sub-committees and is advised of, and invited to attend, all meetings.

Handling of Sensitive Information

In order to ensure that there is an open two-way flow of information and advice between members of the Committees and the Government, members have access to certain sensitive information. Some of this may have to be protected from disclosure to safeguard Canada's commercial and economic interests.
interests. Similarly, members must respect the confidentiality of sensitive information supplied by fellow members.

Members are asked to sign a Security Declaration, based on the provisions of the Official Secrets Act of 1939. They are freed from their oath only when the information is made public by the Government.

Reports and recommendations of the committees which are based on, or refer to, classified information supplied by the Government will also be classified and afforded the appropriate treatment under the Access to Information Act.

Participation in the advisory committee system should not inhibit open discussion of issues within members' organizations, or prevent members from speaking out on issues of general principle. However, certain specified information must remain out of the public domain. Members, therefore, are asked to exercise appropriate care in discussions with non-Committee members.


Annex 4

PRINCIPLES AND GOALS OF SWISS DEVELOPMENT POLICY

The principles and goals of Swiss development policy are laid down in the Federal Law on international development co-operation and humanitarian aid of 19 March 1976, and are worded as follows:

"Article 2: Principles

International development co-operation and humanitarian aid are an expression of solidarity. They represent one of the principles which shapes Switzerland's relations with the international community and they reflect the interweaving of interests around the world. They are based on mutual respect for the rights and interests of partners.

The measures in this law bear in mind the conditions in the partner country and the requirements of the people for which the measures are intended.

Switzerland's ODA [Official Development Assistance] is provided in the form of grants or at preferential terms. As a rule, it complements the efforts of the partner.

Article 5: Goals

Development co-operation supports developing countries in their efforts to improve the living standards of their people. It should contribute to an advancement in the development of these countries, but through their own efforts. In the long run, it tries to improve the balance within the community of nations.

It supports, primarily, poorer developing countries, regions and population groups. Therefore it promotes:

(a) the development of rural areas;
(b) the improvement of the nutritional situation, especially through self-sufficiency in agricultural production;
(c) handicrafts and local small-scale industries;
(d) the creation of new jobs;
(e) the restoration and protection of ecological and demographic balance."
UNITED STATES TRADE POLICY CO-ORDINATION

Congressional Affairs

In 1995, USTR continued with the 104th Congress the spirit of co-operation and consultation established in previous years on a wide range of important trade issues.

Over the course of the year, hundreds of briefings and consultations were held with Members of Congress and staff from over a dozen Congressional committees and numerous personal offices. Ambassador Mickey Kantor, and Deputy USTRs Charlene Barshefsky and Jell Lang, testified before House and Senate committees on issues such as the Japan auto negotiations, the Asia-Pacific Economic Co-operation Forum, the China Intellectual Property Rights Agreement and Most-Favoured-Nation (MFN) extension, the Caribbean Basin Initiative, extension of the Generalized System of Preferences, Financial Services negotiations, the OECD Shipbuilding Agreement, NAFTA implementation, and other issues. Consultations and briefings were provided on all of the above issues, as well as on the Free Trade Area of the Americas, Chile's accession to the NAFTA, fast-track negotiating authority, intellectual property rights, WTO implementation issues, trade and the environment, and many others. Each month, Congressional Affairs staff followed up on roughly two hundred requests for information from individual Members' and committee offices. USTR also assisted in the preparation of trade-related briefing materials for foreign trips by Congressional delegations.

Close co-operation with the Congress was particularly helpful on some of our Asian trade initiatives, in particular with the China IPR Agreement in February and the Japan Auto and Auto Parts Agreement in June. In both cases, strong bipartisan support of the Administration's efforts to open these markets produced letters and resolutions to bolster U.S. negotiators' efforts. A Senate resolution supporting the President's decision to threaten sanctions on Japanese automobiles, offered by Senators Dole and Byrd, passed 88-8. The same was true for successful efforts to open the Korean market to U.S. beef and pork products, as well as on a host of other issues.

This year, action was taken on several pieces of legislation supported by USTR. The House of Representatives passed legislation extending permanent MFN status to Cambodia and graduating Bulgaria from the Jackson-Vanik Program. Similar bills were also introduced in the Senate. Legislation reauthorizing the Generalized System of Preferences through December 1996 was passed by the Ways and Means Committee and should see action in 1996. In addition, the Ways and Means Subcommittee on Trade unanimously passed the implementing legislation for the OECD Shipbuilding Agreement. The full Ways and Means Committee and the Senate Finance Committee are scheduled to complete work on this bill early this year. Upon final House and Senate action, the Shipbuilding Agreement will go into effect on 15 July 1996.

USTR looks forward to maintaining its close working relationship with the Congress in 1996.

Private Sector Advisory Committee System and Intergovernmental Affairs

The Clinton Administration created USTR's Office of Intergovernmental Affairs and Public Liaison to expand and enhance USTR's partnership with and outreach to state and local governments, the business community, labour, environmental, and special interest groups. The private sector advisory committee system falls under the auspices of the Intergovernmental Affairs and Public Liaison office.

The Office of Intergovernmental Affairs and Public Liaison has been appointed as the NAFTA and WTO State Co-ordinator. As such, the office serves as the liaison to all state and local governments on the efforts to implement the NAFTA and the WTO. Regional seminars and consultations are ongoing throughout the year.

The U.S. Congress established the private sector advisory committee system in 1974 to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and
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economic interests. Congress expanded and enhanced the role of this system in three subsequent trade acts.

The advisory committees provide information and advice on U.S. negotiating objectives and bargaining positions before entering into trade agreements, on the operation of any trade agreement once entered into, and on other matters arising in connection with the development, implementation, and administration of U.S. trade policy.

The private sector advisory committee system consists of thirty-three advisory committees, with a total membership of approximately 1,000 advisors. The system is arranged in three tiers: the President’s Advisory Committee for Trade Policy and Negotiations (ACTPN); seven policy advisory committees; and twenty-five technical, sectoral, and functional advisory committees.

The President appoints forty-five ACTPN members for two-year terms. The 1974 Trade Act requires that membership broadly represent key economic sectors affected by trade. The committee considers trade policy issues in the context of the overall national interest.

The seven policy advisory committees are appointed by the USTR alone, or in conjunction with other Cabinet officers. Those managed solely by USTR are the Investment and Services Policy Advisory Committee (INSPAC), the Intergovernmental Policy Advisory Committee (IGPAC), and the Trade Advisory Committee on Africa (TACA). Those policy advisory committees, managed jointly with the Departments of Commerce, Agriculture, Labor, and the Environmental Protection Agency are, respectively, the Industry Policy Advisory Committee (IPAC), Agricultural Policy Advisory Committee (APAC), Labor Advisory Committee (LAC), and Trade and Environment Policy Advisory Committee (TEPAC). Each committee provides advice based upon the perspective of its specific sector or area.

The twenty-five sector, functional, and technical advisory committees are organized in two areas: industry and agriculture. Representatives are jointly appointed by the USTR and the Secretaries of Commerce and Agriculture, respectively. Each sectoral or technical committee represents a specific sector or commodity group (such as textiles or dairy products) and provides specific technical advice concerning the effect that a trade policy decision may have on its sector. The three functional advisory committees provide cross-sectoral advice on customs, standards, and intellectual property issues.

Private sector advice is both a critical and integral part of the trade policy process. USTR already maintains an ongoing dialogue with interested private sector parties on most trade agenda issues. The advisory committee system is unique, however, since the committees meet on a regular basis, receive sensitive information about ongoing trade negotiations and other trade policy issues and developments, and are required to report to the President on any trade agreement entered into under Section 1102 of the 1988 Trade Act.

Public and Private Sector Outreach

The Clinton Administration’s 1995 trade agenda provided many opportunities for the USTR’s Office of Intergovernmental Affairs and Public Liaison to conduct outreach to and consultations with the private sector advisory committees, state and local governments, and numerous public groups.

The GATT Uruguay Round: Throughout 1995, the Intergovernmental Affairs and Public Liaison office conducted and facilitated specific consultations for the private sector and state and local governments on the implementation of the Uruguay Round and World Trade Organization (WTO), including the Negotiating Group on Basic Telecommunications (NGBT), financial services, maritime and the Agreement on Subsidies and Countervailing Measures.

The Asia Pacific Economic Forum (APEC): The Office briefed and facilitated consultations with all private sector advisors on the APEC agenda, issues and strategy. The office is also a participant in inter-agency efforts to promote the goals and objectives of the APEC and to educate the public regarding the same.

The Summit of the Americas: The Office briefed and facilitated consultations with all private sector advisors on the Summit agenda and strategy.

Public Education Campaign: The Office continues its efforts to promote and educate the public on
trade issues. USTR’s Internet Home Page will serve as a vehicle to communicate information to the public. The USTR Internet address is http://www.ustr.gov.

State and Local Government Relations

The passage of NAFTA and the Uruguay Round created expanded consultative procedures with state and local governments. Under both Agreements, the Trade Representative designated in the Office of the United States Trade Representative (USTR) a “Co-ordinator for State Matters”. The Co-ordinator carries out the functions of informing the states on an ongoing basis of trade-related matters that directly relate to or that may have a direct effect on them. The Co-ordinator also serves as a liaison point in the Executive Branch for state and local governments and federal agencies, working with relevant agencies, to transmit information to interested state and local governments, and relaying advice and information from the states on trade-related matters.

To work with the Co-ordinator for State Matters, each state designates a single point of contact within the state responsible for the transmittal of information to USTR and the dissemination to relevant state offices of information received from USTR.

USTR works with the state single points of contacts, as well as state Governors and Attorneys-General, on trade-related issues of State interest including the implementation of both the NAFTA and Uruguay Round Agreements. Specific matters of State interest have included the identification of State practices potentially affected by the Uruguay Round Agreement on Subsidies and Countervailing Measures and the identification and reservation of State measures under the NAFTA in the area of services and investment.

Regional Implementation Seminars: In 1995 USTR’s Intergovernmental Affairs and Public Liaison also conducted a series of regional implementation seminars for the NAFTA and the Uruguay Round trade agreements. These two day-long seminars, which dealt with the State impact and opportunities of the NAFTA and Uruguay Rounds, were held in Minneapolis, Tallahassee, Denver, and Seattle.

Policy Co-ordination

By law, USTR plays the leading role in the development of policy on trade and trade-related investment. Under the Trade Expansion Act of 1962, the President established an inter-agency trade policy mechanism to assist with the implementation of these responsibilities. This organization, as it has evolved, consists of three tiers of committees that constitute the principal mechanism for developing and co-ordinating U.S. government positions on international trade and trade-related investment issues.

The Trade Policy Review Group (TPRG) and the Trade Policy Staff Committee (TPSC), administered and chaired by USTR, are the subcabinet inter-agency trade policy co-ordination groups that are central to this process. The TPSC is the first line operating group, with representation at the senior civil servant level. Supporting the TPSC are more than sixty subcommittees responsible for specialized areas and several task forces that work on particular issues.

Through the inter-agency process, USTR assigns responsibilities for issue analysis to members of the appropriate TPSC subcommittee or task force. Conclusions and recommendations of this group are then presented to the full TPSC and serve as the basis for reaching inter-agency consensus. If agreement is not reached in the TPSC, or if particularly significant policy questions are being considered, issues are taken up by the TPRG (Deputy USTR/Under-Secretary level).

Member agencies of the TPRG and the TPSC consist of the Departments of Commerce, Agriculture, State, Treasury, Labor, Justice, Defense, Interior, Transportation, Energy, and Health and Human Services, the Environmental Protection Agency, the Office of Management and Budget, the Council of Economic Advisers, the International Development Co-operation Agency, the National Economic Council and the National Security Council. The U.S. International Trade Commission is a non-voting member of the TPSC and an observer at TPRG meetings. Representatives of other agencies also may be invited to attend meetings depending on the specific issues discussed.

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ACCOUNTABILITY IN THE WTO

The final tier of the inter-agency trade policy mechanism is the National Economic Council (NEC). Chaired by the President, the NEC is composed of the Vice-President, the Secretaries of State, the Treasury, Agriculture, Commerce, Labor, Housing and Urban Development, Transportation, and Energy, the Administrator of the Environmental Protection Agency, the Chair of the Council of Economic Advisers, the Director of the Office of Management and Budget, the United States Trade Representative, the National Security Advisor and the Assistants to the President for Economic Policy, Domestic Policy and Science and Technology Policy. All executive departments and agencies, whether or not represented on the NEC, co-ordinate economic policy through the NEC.

The NEC Deputies Committee considers decision memoranda from the TPRG, as well as particularly important or controversial trade-related issues. Trade-related issues that raise important national security concerns also may be taken up in the joint Deputies Committee of the National Security Council and the NEC.

During the inter-agency review stage, advice is generally sought from the private sector advisory committees and from Congress. While virtually all issues are developed and formulated through the inter-agency process, USTR advice, in some cases, may differ from that of the inter-agency committees.

As policy decisions are made, USTR assumes responsibility for directing the implementation of that decision. Where desirable or appropriate, USTR may delegate the responsibility for implementation to other agencies.


Annex 6

TREATY ESTABLISHING THE EUROPEAN UNION

"Article 113

1. After the transitional period [to implement the Treaty of Rome] has ended, 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 liberalization, export policy and measures to protect trade such as those to be taken in case of dumping or subsidies.

2. The Commission shall submit proposals to the Council for implementing the common commercial policy.

3. Where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize 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 this task, and within the framework of such directives as the Council may issue to it.

4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.

Article 116

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

During the transitional period…”

References


Wickham, John, and Steve Charnovitz: NGOs and the Original International Trade Regime, unpublished draft paper for a study being undertaken by the Global Environment and Trade Study.


