

# EUROPEAN PARLIAMENT

1999



2004

---

*Session document*

FINAL  
**A5-0331/2001**

11 October 2001

## **REPORT**

on openness and democracy in international trade  
(2001/2093(INI))

Committee on Industry, External Trade, Research and Energy

Rapporteur: Harlem Désir



## CONTENTS

	<b>Page</b>
PROCEDURAL PAGE .....	4
MOTION FOR A RESOLUTION .....	5
EXPLANATORY STATEMENT .....	12

## PROCEDURAL PAGE

At the sitting of 5 July 2001 the President of Parliament announced that the Committee on Industry, External Trade, Research and Energy had been authorised to draw up an own-initiative report, pursuant to Rule 163 of the Rules of Procedure, on openness and democracy in international trade and the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Consumer Policy, the Committee on Development and Cooperation and the Committee on Constitutional Affairs had been asked for their opinions.

The Committee on Industry, External Trade, Research and Energy had appointed Harlem Désir rapporteur at its meeting of 25 April 2001.

It considered the draft report at its meetings of 20 June, 28 August, 17 September and 10 October 2001.

At the latter/last meeting it adopted the motion for a resolution by 48 votes to 5, with 1 abstention.

The following were present for the vote: Carlos Westendorp y Cabeza, chairman; Renato Brunetta, Nuala Ahern, Peter Michael Mombaur, vice-chairman; Harlem Désir, rapporteur; Maria del Pilar Ayuso González (for Alejo Vidal-Quadras Roca), Ward Beysen (for Colette Flesch), Guido Bodrato, Massimo Carraro, Gérard Caudron, Giles Bryan Chichester, Nicholas Clegg, Dorette Corbey (for Glyn Ford), Willy C.E.H. De Clercq, Raina A. Mercedes Echerer (for Nelly Maes), Concepció Ferrer, Ilda Figueiredo (for Luisa Morgantini, pursuant to Rule 153(2)), Francesco Fiori (for Roger Helmer), Christos Folias, Pat the Cope Gallagher, Norbert Glante, Cristina Gutiérrez Cortines (for Angelika Niebler), Michel Hansenne, Philippe A.R. Herzog (for Fausto Bertinotti), Hans Karlsson, Wolfgang Kreissl-Dörfler (for Mechtild Rothe), Bernd Lange (for François Zimeray), Werner Langen, Rolf Linkohr, Caroline Lucas, Eryl Margaret McNally, Erika Mann, Angelika Niebler, Giuseppe Nisticò (for Umberto Scapagnini), Reino Kalervo Paasilinna, Elly Plooi-j-van Gorsel, John Purvis, Godelieve Quisthoudt-Rowohl, Alexander Radwan (for Konrad K. Schwaiger), Bernhard Rapkay (for Imelda Mary Read), Daniela Raschhofer, Christian Foldberg Rovsing, Paul Rübig, Ulla Margrethe Sandbæk (for Yves Butel, pursuant to Rule 153(2)), Esko Olavi Seppänen, Helle Thorning-Schmidt (for Elena Valenciano Martínez-Orozco), Astrid Thors, Claude Turmes, Jaime Valdivielso de Cué, W.G. van Velzen, Dominique Vlasto, Anders Wijkman, Myrsini Zorba and Olga Zrihen.

The Committee on Development and Cooperation decided on 10 October 2001 not to deliver an opinion; the Committee on Employment and Social Affairs decided on 4 October 2001 not to deliver an opinion; the Committee on the Environment, Public Health and Consumer Policy decided on 27 August 2001 and the Committee on Constitutional Affairs decided on 12 September 2001 not to deliver an opinion.

The report was tabled on 11 October 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

## MOTION FOR A RESOLUTION

### European Parliament resolution on openness and democracy in international trade (2001/2093(INI))

*The European Parliament,*

- having regard to its resolutions of 4 May 1999 on multilateral commercial relations: the European Union and the developing partner countries of the European Union<sup>1</sup>, 18 November 1999 on the communication from the Commission to the Council and the European Parliament on the EU approach to the WTO Millennium Round (COM(1999) 331 – C5-0155/1999 – 1999/2149(COS))<sup>2</sup>, 15 December 1999 on the Third Ministerial Conference of the World Trade Organisation in Seattle<sup>3</sup> and 13 March 2001 on the WTO Built-in Agenda negotiations<sup>4</sup>,
  - having regard to the setting up of a 'WTO parliamentary assembly' steering group within the European Parliament on 26 October 2001, to the fact that various preparatory meetings have already taken place, that a parliamentary conference will be held in Doha and that the steering group is broadly responsible for coordinating the Doha conference,
  - having regard to Rule 163 of its Rules of Procedure,
  - having regard to the report of the Committee on Industry, External Trade, Research and Energy (A5-0331/2001),
- A. whereas since the Second World War international trade has made a major contribution to job and wealth creation in the countries that have really benefited from it, although this has not been evenly spread with the share of the least developed countries in decline and with many developing countries encountering high tariffs on their exports and supply constraints and possessing only limited capacity in information and communication technologies; whereas the share of world trade won by developing countries has mainly been concentrated in a few countries;
- B. whereas freer but also fairer and more sustainable world trade must be consolidated under the multilateral system and within a reformed WTO; whereas a rule-based system is the only way of ensuring in a peaceful and equitable manner that its benefits accrue to all nations; whereas international rules and institutions are required to deal with the interaction between trade and other areas such as the environment, health or social standards;
- C. whereas the multilateral trade system is based on the GATT rules, drawn up in 1947, whose preamble says that *'relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment...'* and the agreement goes on to state that *'the attainment of these objectives is particularly*

---

<sup>1</sup> OJ C 279, 1.10.1999, p. 34.

<sup>2</sup> OJ C 189, 7.7.2000, p. 213.

<sup>3</sup> OJ C 296, 18.10.2000, p. 121.

<sup>4</sup> Not yet published in OJ.

*urgent for less-developed contracting parties', and the preamble to the 1994 agreement establishing the WTO added that these objectives must be pursued 'in accordance with the objective of sustainable development, seeking both to protect and preserve the environment'...*

- D. whereas the creation of the WTO following the conclusion of the Uruguay Round in 1994 marked a radical change in the multilateral trade system by extending its jurisdiction to a wide range of new areas and strengthening its rules by establishing a mechanism for effective sanctions,
- E. whereas there is a great need to enhance the participation and influence of legislators in the work of international organisations such as the WTO,
- F. whereas the WTO's main role is to provide its members with an institutional framework for talks, the settlement of disputes and negotiations on trade rules, at both bilateral and multilateral level,
- G. whereas the WTO is an intergovernmental organisation which is in principle run entirely by its member states, but in fact some of them are marginalised because of non-inclusive working methods or because they are not, or not effectively, represented in Geneva owing mainly to insufficient technical assistance and funding;
- H. whereas implementation of the Uruguay agreements has given rise to serious disappointment in developing countries because of the conditions for application of the agreements by the industrial countries and by the developing countries respectively, the cost of applying certain agreements, and the non-participation of many developing countries in decision-making within the WTO,
- I. mindful of the recent initiative by the WTO Director-General to set up an advisory group of experts tasked with drawing up reform proposals,
- J. whereas the first few years of operation of the WTO have given rise to considerable public concerns, which were expressed at the Seattle Conference, and at the Nice and Göteborg European Councils or the G-7 meeting in Genoa, with regard to the taking into account in trade policy of issues such as environmental protection, observance of the precautionary principle, compliance with social standards, access to medicines for AIDS patients in the developing countries or the limits to the commoditisation and patenting of living organisms in particular,
- K. mindful of the ILO Director-General's proposal of 11 June 2001 to set up a commission on the social dimension of globalisation which will be established after the ILO's final decision in November 2001,
- L. whereas clarification is needed on some clauses of the agreement on services, to make clear that WTO rules do not impede the right of Member States to regulate and intervene in services of general interest;
- M. whereas concern among many citizens about the WTO reflects the fear that its rules may allow trade considerations to override other legitimate objectives of public policy, and to

undermine the democratic process itself,

- N. whereas Article 177 of the EC Treaty refers to solidarity with the developing countries and the European Union must make an effective contribution to defining the outlines of a form of governance for development involving rapid reforms to WTO rules,
1. Notes that the current trade system is undergoing a crisis of democratic legitimacy, in particular because of unequal participation, the uneven distribution of the benefits of world trade, the ambiguity of some of its rules and their impact on non-trade issues, a lack of internal and external transparency, and a low level of involvement of parliaments and civil society in the work of the WTO; calls for the reform of the WTO and of the international trade system to address these problems;
  2. Notes that the WTO is not the only component of the world trade system, considers that the same principles of openness and democracy should be applied *pari passu* to plurilateral, regional and bilateral trade agreements and calls on the European Commission to observe such principles in all its bilateral and international trade negotiations;

### **Legitimacy, equal participation, internal transparency, capacity building**

3. Points out that the democratic legitimacy of the WTO, an intergovernmental organisation, in principle relies firstly on the equal participation of all members in decisions; notes, however, that 24 developing countries that are WTO members do not have a permanent representation at WTO headquarters in Geneva and that many others have only very small delegations which do not enable them to follow all the work that concerns them; considers it vital to remedy this marginalisation and to ensure effective participation of all members in the working of and in decision-making within the WTO;
4. Notes also that many negotiations take place in small groups from which poor countries are in reality excluded;
5. Is concerned at the difficulties encountered by non-member LDCs involved in accession procedures and at the level of commitment demanded of them which is higher than that of existing member countries; asks the Commission to revive its proposal for a fast-track accession procedure;
6. Calls on the Commission and the Member States of the EU to support the efforts of the developing countries to set up joint permanent regional representations at the WTO and to continue to provide support in this respect to the ACP countries and to resource centres such as the 'Advisory Centre on WTO law';
7. Calls on the Commission, in international organisations and, in particular, at the WTO, to place greater emphasis on the interrelationship between favourable economic development, trade regulation and the development of social competence at state level and, in this connection, to submit a report to Parliament in the spring of 2002 that looks into the interrelationship between trade theory, social competence and sustainability in trade;

8. Calls on the Commission to propose, on behalf of the EU, to mainstream existing trade-related technical assistance, to identify the gaps for developing countries and to strengthen the WTO's budget, on the basis of a contribution proportional to each member's share of international trade, to enable all members of the WTO to have fair representation in Geneva and to increase the resources available for technical assistance to developing countries and, in particular LDC's;
9. Calls, pending permanent representation of all members in Geneva, for the strengthening of the existing early warning system, to be established to enable non-resident countries to be informed at a sufficiently early stage that new negotiations or decisions are to be submitted to a particular body so that they can prepare themselves and for the planning of meetings within the WTO to enable all delegations, even the smallest, to participate or to be represented; requests that all members should have rapid access to records of meetings of bodies (councils, committees, working parties, etc) in which they have been unable to participate and to all the information they need to follow the work under way in the various bodies;
10. Asks that the provisions on special and differentiated treatment in trade agreements for the promotion of certain specific interests of developing countries and for the provision of technical assistance to these countries be made operational and effective;
11. Calls for an early warning system to be established to enable non-resident countries to be informed at a sufficiently early stage that new negotiations or decisions are to be submitted to a particular body so that they can prepare themselves for the planning of meetings; requests that all members should have rapid access to records of meetings of bodies (councils, committees, working parties, etc.) in which they have been unable to participate;
12. Calls on the Commission to ensure that the technical assistance and capacity building programmes within the 'Integrated Framework' help the LDCs not only to apply the agreements, but also to defend their interest better in negotiations from the point of view of their development strategy and to influence the formulation of trade policies; calls for a priority effort to be given to building analysis capability before going into the substance of the negotiations in a new round;
13. Asks Commission to ensure better coordination between multilateral and bilateral donors, particularly EU Member States, in the area of technical assistance to the developing countries;
14. Draws attention to the inequalities between member countries with regard to the sanction established by the dispute settlement system; proposes in this connection that Article 7 of the Understanding on Disputes Settlement be revised to encourage financial compensation schemes as a remedy in itself;
15. Regards the proposals on improving the functioning and transparency of the WTO forwarded to the General Council of the WTO by the European Commission on 26 July 2000 as a starting point that can be fleshed out with a view to the fourth Ministerial

Conference in November 2001;

16. Regards the WTO dispute settlement system as a particularly sensitive element of the trade system and international relations; is concerned at the growing number of disputes and is convinced that political relations between countries cannot totally be replaced by judicial relations and invites parties involved in trade disputes to try to find political solutions and compromises; proposes in this connection that Article 7 of the Understanding on dispute settlement be revised to encourage compensation schemes, including temporary ones, rather than recourse to sanctions;
17. Is concerned at the abuses in terms of case law whereby DSB rulings, which are seen as precedents for the interpretation of agreements, are imposing new obligations and rules not explicitly provided for in the texts negotiated by States and ratified by parliaments and are replacing the normal procedure for drawing up rules;
18. Calls on the EU to propose to other members the establishment of clear rules on informal : the latter should be initiated by the chairman of a WTO body or its DG, the agenda and list of participants should be distributed to all members, no country should be excluded if it wishes to participate, the results should be the subject of a formal report to the relevant WTO bodies and communicated to all members; this would increase the balance between transparency and efficiency;
19. Is, in any case, opposed to the practice inherited from the GATT of negotiations restricted to the quadrilateral (United States, Canada, Japan, EU) or the major trading powers, which exclude most of the developing countries, which have no option but to accept the outcomes agreed by the industrialised countries between themselves;
20. Underlines the importance of an intellectual protection system that encourages technology transfer towards developing countries with particular reference to the knowledge-based society; however, is well aware of the difficulties faced by developing countries in implementing the TRIPs Agreement and reiterates its call on the WTO and the Commission to step up technical assistance in this area; urges clarification of the TRIPs Agreement to strengthen access rights to vital medicines (compulsory licences, parallel imports) and supports the idea of promoting discussions, within the WTO, WIPO and WHO, to address the link between the TRIPs Agreement and public health protection issues; asks the Commission as part of the ongoing evaluation of this agreement to stress its compatibility with the biodiversity convention and the biosecurity protocol with particular reference to the biological heritage of the developing countries and conventional know-how;
21. Considers that the specific conditions for implementing the TRIPs Agreement granted to the developing countries are not adequate and calls on the industrialised countries to accept, in the new round of negotiations, a thorough revision of the TRIPs Agreement to take greater account of the developing countries' needs; believes that this review must remove the obstacles to the transfer of technology to the developing countries, ban the patenting of living organisms and bring the rules of the Agreement into line with the 1992 Convention on Biodiversity and the Cartagena Protocol on Biosecurity, as requested by the 'African Group' in the WTO;

### **External transparency and openness**

22. Considers that transparency in the formulation and conduct of trade policy is a legitimate demand of society, citizens and parliamentarians;
23. Considers that the decision to hold the fourth Ministerial Conference in Qatar does not send out a signal of a commitment to openness and democratic dialogue with society;
24. Points out that within the WTO a general rule of openness should apply meaning that the vast majority of documents should be derestricted and published on the WTO website and supports the Commission proposal that all documents, records and decisions should be published;
25. Considers that meetings of WTO bodies should be open to observers from other multilateral organisations and NGOs, in accordance with accreditation procedures similar to those implemented by other international organisations; believes that Webcasting could also be used;
26. Considers that NGOs should be able to submit analyses and written or oral proposals to the various WTO bodies under arrangements to be defined for each of the bodies concerned (General Council, other councils, committees, etc.) as is the practice in other international organisations; calls therefore on the member states of the WTO to ensure that proper democratic accountability is guaranteed;
27. Advocates, in the dispute settlement procedure, that substantive meetings with the parties, meetings of panels and the appellate body, given the judicial nature of the procedures, should in future take place in public, as is customary in court proceedings, and documents, in particular submissions by parties or experts, should be made available to the public, except in rare duly substantiated exceptional cases; calls for the creation of a legal aid office financed from the WTO budget to assist the least well represented countries in acceding to the DSB;
28. Proposes that explicit provision should be made in the dispute settlement procedure for the possibility of panels receiving amicus curiae or amicus briefs from NGOs, particularly on social or environmental issues, but that such submissions should be carefully circumscribed in their length, status and admissibility so that the legitimate rights of developing countries in the dispute settlement process are protected and unnecessary procedural complexity is avoided, while ensuring that this does not become a mechanism for promoting private commercial interest;
29. Insists that some external bodies such as the "Codex Alimentarius", on which the WTO relies for external advice, also require radical reform to restore public confidence, meet elementary standards of openness and free themselves from the dominance of narrow commercial interests;

### **Parliamentary and public scrutiny and parliamentary forum**

30. Proposes once again the creation of a parliamentary Assembly within the WTO with consultative powers and instructs its delegation to the WTO Ministerial Conference in

Doha to organise, in close cooperation with other parliamentary organisations, a meeting of the parliamentarians present to promote this initiative;

31. Considers that the Assembly should be able to receive regular written and oral reports from the WTO and to present proposals to the General Council or other organs of the WTO; it should provide a forum in which trade policy can be opened up to wider scrutiny and debate with society at large;
32. Calls on WTO members and the WTO to provide sufficient support for their parliamentarians to take part in the development of the parliamentary dimension of WTO; stresses the need for a provisional infrastructure for the Parliamentary Assembly until WTO assumes its responsibilities in this respect and, at the same time, offers the necessary facilities for this purpose;
33. Considers that, in the interests of democracy, the most important capacity - building measure is to assist WTO members in developing a democratic and pluralist approach to trade policy formulation and effective monitoring of trade policy; calls on the EU to encourage other WTO members to join it in producing a Declaration of Principles with regard to openness and democracy in trade policy-making; and calls on the WTO secretariat to develop and disseminate best-practice guidelines on openness, consultation and pluralism in trade policy formulations;
34. Considers equally that it is important to develop political debate at national parliamentary and existing regional Assembly level and stresses, therefore, the central importance of participation of parliamentarians in the decision-making process in order to carry out effective democratic control;
35. Notes that there is still a democratic deficit within the European Union in the area of trade policy, in that Article 133 of the EC Treaty excludes the European Parliament from defining and genuinely scrutinising the common commercial policy;
36. Consequently, calls once again on the Member States to revise the provisions of the EC Treaty concerning the common commercial policy so as to guarantee full involvement of the European Parliament in this sphere, by providing for Parliament to be consulted on the negotiating mandates to be given to the Commission, opening up the 133 Committee to Parliament's representatives, and requiring Parliament's assent to all trade agreements;
37. Considers that the Trade Policy Review Mechanism (TPRM) in its current form does not satisfy the requirements of informed public debate; therefore advocates reform of the TPRM to include the social, environmental and development impact of trade policies and an evaluation of how trade policy is formulated and monitored, including the role of parliaments and civil society; and calls for the participation of Parliament and civil society in the review process;
38. Considers that it is essential, not least for the WTO's legitimacy, that its rules should not prevent member countries from pursuing independent and ambitious policies and their parliaments from legislating freely and legitimately in the areas of public health, environmental and consumer protection, and the cultural and education spheres, but such policies should not lead to arbitrary erection of trade barriers, where such barriers are not

necessary to achieve public policy objectives;

39. Urges, in this context, that the SPS Agreement on sanitary and phytosanitary measures be revised to spell out more clearly that the precautionary principle may be taken as the basis for non-discriminatory restrictive measures with a view to preventing, where there is scientific doubt, any risk to public health linked to a food product and/or method of production;
40. Calls for clarification of the scope of the GATS Agreement to ensure adequate protection that public and social services remain the legitimate concern of governments and calls on the Commission to deliver a political declaration clearly guaranteeing the protection of public and social services under regional jurisdiction;
41. Is concerned at the direct and grave effects of some dispute settlement cases on private third parties (particularly SMUs and consumers); on account of the lack of direct applicability of WTO law, such undertakings have at present practically no legal recourse available for seeking compensation from agencies of their state (or community of states) that have demonstrably been shown to be acting unlawfully by the WTO dispute settlement procedure; the Commission should, in cooperation with the Council both at the WTO and within the EU, work to eliminate this shortcoming forthwith;
42. Proposes rewriting the description of qualifications for the recruitment of members of panels and the appellate body, so as to have a wider range of skills, in particular for the conjunction of trade and non-trade issues;

#### **Coherence and new international architecture**

43. Calls for the WTO's cooperation with other multilateral organisations to be strengthened, in particular with organisations responsible for social and environmental standards; requests that such organisations to be granted observer status within the WTO and that arrangements be established to allow them to participate in WTO bodies; calls for the establishment of clear rules on the relationship between WTO Treaties and Multilateral Environmental Agreements such that WTO rules do not constitute an obstacle to the implementation of MEAs;
44. Draws attention to the importance of compliance with basic labour standards; calls for the ILO and its member states to make more vigorous use of its disciplinary mechanisms when such rights are abused; notes that the ILO's constitution permits the imposition of trade sanctions; recalls that the ILO must have the sole power of authorising trade sanctions linked to violation of core labour standards and calls on the WTO to make clear that trade sanctions imposed pursuant to an ILO decision regarding abuse of labour rights could not be considered incompatible with the WTO Treaties; calls for a plurilateral agreement within the WTO on incentives to encourage compliance with the ILO's core labour rights;
45. Calls for the dispute settlement procedure to be revised to provide that, in cases involving non-trade issues covered by other international conventions, the panels or the appellate body should seek the opinion of the relevant international organisations and that this opinion should be published and appended to the ruling;

46. Calls for the WTO and the United Nations to examine new relations between international organisations so as to ensure coherence in international regulatory agreements and conventions; consequently, affirms the need to establish a better balance between international laws and calls for the conclusion of a new agreement on Multilateral Environmental Agreements which would insulate legitimate trade measures incorporated into MEAs from WTO challenge; calls on the Commission to make the relationship between the WTO's dispute settlement procedure, on the one hand, and such procedures under international agreements, on the other, an object of negotiation and to ensure that an appeal may be made to other obligations, e.g. under MEAs, in the WTO dispute settlement procedure;
47. Recommends the strengthening of the trade-related competences of other international bodies, such as the FAO, WIPO, the ILO, WHO and the MEA secretariats, in order better to reconcile trade considerations and international environmental, health and social standards; calls for the precautionary principle in the area of the environment and consumer protection to become an integral component of WTO rules;
48. Calls for an explicit reference to the objectives of the eradication of poverty, the promotion of equitable and sustainable development and environmental protection to be inserted in the preamble to the agreement setting up the WTO at the fourth Ministerial Conference in Doha, Qatar;
49. Invites the Commission, with a view to the fourth WTO Ministerial Conference in Doha, Qatar, to propose the setting up of a working party within the WTO charged with submitted proposals for reform of the functioning of the WTO to the General Council and members as soon as possible;
50. Instructs its President to forward this resolution to the Council and Commission, the parliaments of the Member States, and the members of the WTO meeting at the fourth WTO Ministerial Conference in Doha, Qatar.

## EXPLANATORY STATEMENT

The transition from the GATT era to that of the WTO changed the dimension as well as the nature of the multilateral trading system. We may be well-aware that international trade has increased 18-fold over the last fifty years - but the change has been more far-reaching than this.

GATT involved trade rules that applied, in the main, to a specific area - namely tariff barriers and various quantitative restrictions on the exchange of goods and services. From the outset, it involved a relatively limited number of countries - the key players in international trade. Trade issues were seen as specialist matters and were dealt with in some secrecy, in direct contact with the economic sectors concerned and without interference from the rest of society.

With the advent of the WTO, trade rules were extended to a large number of new areas, including services, intellectual property and investment. There are rules on non-tariff barriers that frequently affect non-trade issues. These rules have a binding force which is backed by a dispute settlement system with the capacity to impose sanctions, which has no equivalent in other multilateral organisations. Finally, enlargement, which begun under GATT, has resulted in an unprecedented diversity among its members. The rules of the trading system now apply not only to the one-fifth of world production that is traded across borders, but also to goods and services that will never be traded internationally. National rules on banking systems, financial services, public procurement, telecommunications and farm subsidies must all comply with WTO rules. All countries are concerned and their internal rules affected, whatever their share of international trade. WTO agreements have already addressed such complex issues as the patenting of living organisms, access to drugs for AIDS sufferers, the interpretation of the precautionary principle as regards foodstuffs and the protection of endangered species, i.e. compliance with other international conventions. Renato Ruggiero, former WTO Director-General, described the organisation as 'a constitution for a single global economy'. We could add that this constitution is based not only on trade agreements, but also on the case law produced on the basis of interpretation of these agreements by the dispute settlement body. This unchecked constitutionalisation can serve to restrict parliaments' freedom to legislate in areas other than those explicitly debated at the time when the agreements were signed. Of course, treaties are negotiated by governments, which already possess the requisite legitimacy. But since the Uruguay Round, many developing countries have made it plain that when they signed certain agreements that they had no role in drawing up, they were not aware of all the legal, administrative and financial ramifications. And surely the vast majority of members of parliament in the EU Member States would not have imagined that by ratifying the agreement establishing the World Trade Organisation they were agreeing to rules that would lead to their country being condemned for banning the use (and thus the import) of hormones in beef destined for human consumption. Surely they would not have imagined that the GATS agreement on services would be invoked to justify a ruling in the banana dispute that would properly seem to be governed by the rules on trade in goods. And there are some ambiguities in the wording of the agreement that lead one to wonder just what impact it will have on the public services sector<sup>1</sup> in the future.

---

<sup>1</sup> Statements made in this regard by Michel Servoz, a head of unit in the Trade DG, are surprising: *Certain sectors appear to us to be extremely important, and in these we would like to see a higher level of commitment. These include the environmental sector, building, distribution and health and education services.* In *GATS Commentary 2000: New Directions in Services and Trade Liberalisation*, Harvard University and Brookings

There are other reasons for questioning the whole multilateral trading system in addition to that of its growing impact on the internal rules of the member states of the WTO, an organisation that is not subject to any real democratic control. It concerns both its legitimacy and its effectiveness for some of its members. The democratic legitimacy of the WTO, an intergovernmental organisation, is based on the principle that all members participate equally and have an equal say in the organisation. But most of the developing countries feel marginalised by its operation and cut off from the decision making process. At least 24 developing countries that are members of the WTO have no permanent representation in Geneva, and numerous others have only very small delegations that do not enable them to follow all of the proceedings that concern them. Many lack expertise and support in their home countries. By way of example, in Seattle, while most developing countries were represented by one person (the minister for external trade), the United States delegation comprised around 150 people and those of Japan and the EU close to 100. In such situations, form and content are real issues for developing countries. The promise of the Uruguay Round and of the liberalisation of trade was that progress for some would result in progress for all. But six years on from the creation of the WTO, the picture before us reveals a limited opening up of markets in the north, considerable difficulties regarding the implementation of agreements and persistent marginalisation from the workings of the WTO. This feeling is more acute still for the least developed countries (LDCs), which are home to 600 million inhabitants. Twenty years ago, they accounted for 0.6% of international trade. Today the figure stands at only 0.4%. The WTO continues to be dominated by the large trading powers, and it is they that benefit overwhelmingly from its policies. For Rubens Ricupero, Director-General of the United Nations Conference on Trade and Development, the legitimacy of any international organisation is dependent upon three main factors which are closely interlinked: *universal membership and the accession process, real participation by all members in the decision-making process and a fair distribution of the benefits of the system*<sup>1</sup>. We can identify with his view that with regard to democratic legitimacy, within the WTO there is at the very least some *tension between the legal situation and the real situation*<sup>1</sup>.

Although certain events, and particularly the failure of Seattle, have led the WTO to start to acknowledge this, this recognition has yet to be translated into the change that is needed on several key issues: effective participation by developing countries, the need for rules and agreements to take real account of the vulnerability of poor countries, internal and external transparency, openness to the concerns of citizens and to dialogue with NGOs, parliamentary control and respect for other international principles in areas such as the environment, health and social rights.

*How can we ensure that more global regulation of trade does not mean less democracy and sustainable development? How can we encourage fair trade for the countries of the south as well as those of the north? How can we create the right conditions for a trade system and*

---

Institution Press, Cambridge/Washington. His remarks echo the sentiments expressed by Robert Madelin, a Director in the same DG, "As early candidates (for liberalisation) we identified tourism and business/professional services as well as distribution. Other sectors on which we need more information are construction, education, environmental, health and social services, and audiovisual services" in a letter to the President of the European Services Forum, January 2000, both quoted by Susan George in *Remettre l'OMC à sa place*, Milles et une nuits, Paris 2001.

<sup>1</sup> Interview with the rapporteur, 10 July 2001.

*organisation that are open, transparent and democratic?* The proposals contained in this report are an attempt to address these challenges and to suggest the possible components of a new approach for the European Union's policy in this area.

### **I - equal participation, internal transparency and capacity building**

The equal and effective participation of all members is a key factor in any new direction for the multilateral trading system. The WTO has tried to remedy the situation of those countries with no permanent representation in Geneva by scheduling the meetings of various councils in the same week. But since the WTO meets on an almost daily basis, that is a very limited response to the problem. A further problem is that much information remains inaccessible to members who are unable to take part in either formal or informal meetings. The so-called 'green room' consultations, which often involve only the large commercial powers, and sometimes only the quadrilateral (United States, Canada, Japan and the European Union) exclude most developing countries. A further consequence was that at the end of the Uruguay Round, many countries signed agreements that had been drawn up without them, that they were unable to implement in the scheduled timescale and met not their own needs, but those of powerful lobbies in the industrialised countries. An example is the TRIPS agreement on intellectual property, which is totally unsuited to technology transfer towards developing countries and threatens the use of generic medicines. It breaches other conventions by paving the way for the patenting of living organisms, and its implementation is creating enormous difficulties. Clare Short, the United Kingdom's Secretary of State for Development, has stated that implementation of the TRIPS, SPS (Sanitary and Phytosanitary), Customs Valuation and TRIMS (Trade-Related Investment Measures) agreements oblige developing countries *to create new institutions or strengthen existing ones, employ and train staff, improve their information technology...implementing the Uruguay Round increases expenditure without any increase in tax revenue. It is hardly surprising that developing countries have been unable to comply in numerous areas*.<sup>1</sup>

The dispute settlement mechanism is based on a system of sanctions that does nothing to remedy the inequalities that exist among members. The sanctions applied to a poor country, or to one with no 'market power' would have no effect on the exports of an industrialised country. And developing countries are reluctant to become involved in long and costly procedures that pit them against legal and other experts from industrialised countries.

Finally, participation obviously means that those developing countries that are not yet members of the WTO must join. But the accession procedure is cumbersome and inappropriate. Of 19 developing countries that were not members when the WTO was created, 10 are currently following the accession procedure, but only Vanuatu is close to being admitted. Developing countries and the LDCs are subjected to heavier obligations than existing members (renouncing special and differentiated treatment, transition periods, agriculture). The Commission presented a proposal for a fast-track procedure, but this has not been followed up.

---

<sup>1</sup> Clare Short in *The Role of the World Trade Organisation in Global Governance*, UN University Press, 2001. The World Bank estimated the cost of implementing the Uruguay agreements for a developing country at around USD 150 million, which for most LDCs represents more than the whole of direct foreign investment or annual State development aid.

There is thus a need to build on the proposals for improved working methods and transparency that the Commission transmitted to the WTO General Council on 26 July 2000 with a view to the IVth Ministerial Conference in November 2001.

*The proposals set out in the motion for a resolution are aimed at achieving:*

The creation of a fund to enable all countries to have a representation in Geneva, support for regional representations bringing together developing countries, ensuring that those countries without a representation have rapid access to records of meetings, ensuring internal transparency, establishing an early-warning system to allow developing countries to prepare for discussion of new questions, adjusting the planning of meetings to enable all delegations, even the smallest, to participate or to be represented at negotiations on matters of concern to them, establishing clear rules on so-called 'informal' consultations and allowing all countries that wish to take part to do so and ensuring that they receive a copy of the meeting's conclusions, reforming the dispute settlement system to give the developing countries recourse to collective sanctions in certain circumstances, and facilitating the accession of the LDCs.

Effective participation will also require capacity building in the area of trade. Industrialised countries, including the EU and its 15 members, are working towards this goal by supporting various programmes under the auspices in particular of UNCTAD (Trade Analysis and Systematic Issues Branch), the WTO (Technical Cooperation and Training Division) and the World Bank, which coordinates the programmes of the other organisations through the Integrated Framework. It is questionable whether the World Bank is the best choice for the job - capacity building in the area of trade should not be seen simply as one more instrument of structural adjustment policy. It should enable governments and their administrations to meet the challenges of implementing the agreements, but also focus more on shaping trade policy with respect to their own development strategies. Capacity building should encompass the establishment of tools to assess the environmental and social impact of trade agreements. There should be opportunities to seek assistance from NGOs, international trade union organisations, etc.

## **II - External transparency and openness**

Within the WTO, which deals with public affairs, transparency should be the rule and secrecy the exception. Its discussions must be given increased publicity so that citizens can find out what objectives are being pursued, the reasons behind decisions and the positions of the various representatives, their own included. The WTO must open up, make a break with the culture of GATT and accept that legitimate views on trade can come from the outside. Today, in comparison with numerous other multilateral organisations, the WTO is mediaeval in terms of openness and external transparency. Article V(2) of the Marrakesh Agreement provides that, *'The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organisations concerned with matters related to those of the WTO.'* Two decisions taken in Singapore in 1996 laid down guidelines for relations with NGOs. But these relations have tended to be limited to a few conferences. Rather than maintaining a fraught relationship with NGOs, the WTO secretariat ought to accept the fact that they have a rightful place in public debate because they express concerns that are shared by many citizens. That does not mean that NGOs should be placed on the same footing as that

of governments, and it is not what they want. But they do have a role in the debate. Other multilateral organisations have introduced observer status or accreditation arrangements.<sup>1</sup> Even the World Bank scores more highly than the WTO!

*The proposals set out in the motion for a resolution are aimed at achieving:*

The rapid derestriction and speedy publication on the WTO website of documents and records of the meetings of all WTO bodies, the opening up of meetings, including those under the Trade Policy Review Mechanism (TPRM), to other multilateral organisations and NGOs, allowing NGOs to submit studies and written or oral proposals to WTO bodies, and with regard to the dispute settlement procedure, making public the substantive meetings with the parties, meetings of panels and the appellate body and submissions by the parties or experts, and allowing special groups to receive amicus briefs from NGOs.

### **III - Parliamentary dimension**

The most important methods of parliamentary monitoring of trade policy are those that can be put in place at national level (and at Community level in the case of the EU). Parliaments should be fully involved in drawing up negotiating mandates, following up these mandates and the assessment of the agreements and their impact. In practice, their role is generally reduced to rubber stamping the agreements. But parliamentary involvement is an essential element in the legitimacy of trade policy, and effective scrutiny is one means of ensuring that WTO rules do not prevent member states from subsequently continuing to legislate freely in areas such as health, consumer protection, the environment and culture.

*The proposals on parliamentary scrutiny are aimed at:*

Opening up the TPRM to members of parliament, correcting, within the EU, the democratic deficit of the common commercial policy by reforming Article 133 of the EC Treaty so as to ensure the full involvement of the European Parliament, providing for Parliament to be consulted on the negotiating mandates, opening up the 133 Committee to Parliament's representatives and requiring Parliament's assent to all trade agreements and promoting best practice on parliamentary scrutiny of trade policy on the basis of a comparative study inside and outside the EU.

*Proposal for a parliamentary forum*

The European Parliament has proposed the creation of a WTO parliamentary assembly. At the seminar organised by Parliament on 10 and 11 April 2001, attended by members of parliament from many countries, both northern and southern, the Presidency's final declaration called on parliamentarians to call a meeting to mark the IVth Ministerial Conference, to discuss the holding of a forum of all WTO members for the purposes of exchanging views, receiving information and monitoring the activities of the WTO. This kind

---

<sup>1</sup> As has been the case of United Nations agencies responsible for international conventions or for providing secretariat services, such as the CBD (Convention on Biological Diversity), UNCED (United Nations Conference on Environment and Development), UNCTAD, etc. See the extremely comprehensive study by the International Centre for Trade and Sustainable Development (ICTSD) entitled, '*Accreditation schemes and other arrangements for public participation in international fora*', Bridges, Geneva.

of forum, made up of delegates from the parliaments of the member states, could have a consultative role *vis-à-vis* the WTO's strategic choices. It would enable the opinions of elected national and local institutions, trades unions and northern and southern NGOs to be taken into account. It could be a powerful forum for debate on the relationship between trade rules and other areas. There must be further discussion of this question with other parliaments, the IPU and other multilateral organisations. This parliamentary assembly should be able to receive reports from the WTO Secretary-General, the President of the General Council and other councils (including services, goods and intellectual property) and to submit proposals to them. Ideally, this forum would be created under the auspices of the agreement establishing the WTO, although it could initially be established by on a temporary basis by consent. Given the need for the various international policies to be more consistent and for a greater parliamentary role in global governance, the real question we ought to consider is whether we need a world parliamentary assembly for all international organisations (those inside the United Nations system and those like the WTO, that should be part of the system). If this assembly was organised in large specialised committees (including one on trade) meeting regularly, it could be more operationally effective than a forum holding plenary sessions two or three times per year.

#### **IV - Coherence, hierarchy of norms and new international architecture**

One of the first tasks of such a forum (initially a WTO assembly, or a global parliamentary assembly) could be to debate a new architecture for relations between international organisations so as to ensure coherence in international regulatory policies and to propose a hierarchy of norms to be respected by all. These proposals would be submitted to the United Nations General Assembly and the WTO General Council and ministerial conference.

##### *The proposals set out in the motion for a resolution seek to:*

Strengthen cooperation relations between the WTO and other multilateral organisations, ensure that the panels and appellate body seek the opinion of the relevant organisations in cases involving other international conventions and for this opinion to be published, provide for the possibility of appealing against WTO decisions to another multilateral organisation, improved guarantees for the precautionary principle through revision of the SPS Agreement and reform of Codex Alimentarius to ensure that it conforms with the principles of democratic supervision required by the WTO, include in the preamble of the agreement establishing the WTO the objectives of the eradication of poverty, the promotion of fair and sustainable development, the protection of the environment and compliance with basic social standards. The last point is clearly within the remit of the ILO, but is not one the WTO can avoid, despite the fact that according to Mike Moore, WTO Director-General, an agreement is further away than it was at Seattle.<sup>1</sup> Compliance with basic labour standards could initially be strengthened by more rigorous use of the existing ILO mechanisms. The ILO has the power to propose sanctions, as it did in the case of Myanmar, when it invoked Article 33 of its statute for the first time. Any regard for compliance with social standards on the part of the WTO must not have as its objective limiting imports. The aim must be to ensure that members respect ILO conventions and that the WTO respects ILO decisions. This is the reason why the EU must go beyond the Commission communication on promoting core labour standards.

---

<sup>1</sup> Interview with the rapporteur, 9 July 2001.

*The proposals are aimed at:*

Achieving a plurilateral agreement within the WTO based on the requirement that all members must have ratified at least the ILO Declaration on fundamental principles and a system of incentive measures through the GSP without, however, excluding the possibility of authorising trade sanctions if the latter were proposed or requested by the ILO, which has the sole power to do so.

**Conclusion**

Trade policy is the oldest of the EU's external common policies. It does not merely concern economic interests and competition. The EU's position says much about its vision of the world and of north-south relations in particular. It also reveals a belief in a division between that which is the domain of the market and that which societies must do in the name of principles such as solidarity. This policy must reflect the Union's fundamental values and objectives. For this reason, the EU's priorities must be the establishment of fair and equitable trade, a democratic multilateral system, a reformed WTO and a new balance in international rules that puts human and social rights, environmental protection, the precautionary principle and sustainable development before a narrow vision of commercial interests.