

*European Economic and Social Committee*

**REX/099**

**For a WTO with a human face**

Brussels, 26 March 2003

**OPINION**

of the European Economic and Social Committee

**For a WTO with a human face: the EESC's proposals**

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On 17 January 2002 the European Economic and Social Committee, acting under Rule 23(3) of its Rules of Procedure, decided to draw up an own-initiative opinion entitled

*For a WTO with a human face.*

The Section for External Relations, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 12 March 2003. The rapporteur was **Mr Dimitriadis**.

At its 398<sup>th</sup> plenary session (meeting of 26 March 2003), the European Economic and Social Committee adopted the following opinion, by 89 votes in favour, two against and one abstention.

## 1. Summary

1. A year on since the Doha Ministerial Conference, the WTO has been seeking solutions to the critical problems facing its member states and their peoples as a result of the liberalisation of world trade. With the experience of multiannual rounds of trade negotiations under the General Agreement on Tariffs and Trade (GATT) and the guiding principles based on the decisions taken at the Ministerial Conferences (Singapore, Geneva<sup>1</sup>, Seattle<sup>2</sup>, Doha), the WTO is now facing a moment of decision. The decisions needed must take account not only of the new circumstances prevailing in the world economy (problems caused by the liberalisation of trade, environmental problems, agricultural restructuring, etc) but also of the reactions of the world community to critical humanitarian and social problems (social inequalities, the spread of poverty, dangerous epidemics, etc.).
2. Since the 4<sup>th</sup> Ministerial Conference (Doha), which put sustainable development at the centre of trade negotiations, and in anticipation of the 5<sup>th</sup> Ministerial Conference (Cancun, Mexico), the WTO has been called on to show particular interest in the least developed countries (LDCs) through the transfer of resources and technical know-how as regards its external activities and to do away with gaps in communication (where these exist) and to allow the introduction of parliamentary supervision while also consulting and informing the representatives of organised civil society, following the example of the UN and the Commission, as regards its internal operations.
3. The present EESC opinion on the WTO is intended as a supplement to its previous opinions drawn up in the run-up to the various Ministerial Conferences which dealt mainly with the agenda and technical topics included in the various negotiating rounds. Its aim is to make a constructive contribution to the global debate and to the Commission's efforts currently underway to give this international organisation a more human face and to satisfy the justified demands of developing countries and of civil society stakeholders who accuse it of lacking sensitivity, transparency, adaptability and flexibility.
4. In order to formalise the above, the EESC proposes:
  1. creating a parliamentary dimension to the WTO, despite the difficulties inherent in such a proposal, in order to widen the democratic debate and to ensure that elected representatives have substantial involvement in its operations.
  2. establishing a formal dialogue between the WTO and the stakeholders of organised civil society as there is a need to endorse and recognise these stakeholders and to establish a concrete and structured code of communication.

3. establishing a formal dialogue between the WTO and the other international organisations (UN, World Bank, IMF, OECD, ILO, etc.) and with regional transnational organisations so that action can be coordinated to achieve better results and to avoid conflicting programmes and wasted resources.
  4. providing ongoing and unbroken support to the LDCs by transferring resources and technical expertise so that their participation in WTO processes is both substantial and fruitful. The Committee recognises as an important factor the major economic and social disparities which exist among the LDCs such that the circumstances call for the creation of clearly distinguished separate categories.
  5. showing particular sensitivity in handling the critical issues facing developing countries in relation to poverty<sup>3</sup>, epidemics, the environment and agricultural production where these affect trade policies and are within the remit of the WTO.
5. The EESC emphasises the immediate need to draw up an international strategy leading to balanced development and prosperity for all nations with particular consideration for the issues of the environment and working conditions.
  6. The EESC would also stress the need to trace out an international strategy for consumer protection.

## **2. International economic situation – economic trends in the developing and least developed countries**

1. The removal of trade and other barriers at global level has gradually led to the creation of a new order in international trade with major positive and negative implications. The most important consequence of this development is without doubt the increased interdependence of national economies on international commercial exchanges. This interdependence of economies, in conjunction with the use of new technological tools, which have accelerated international trade, intensifies the need for global trade to be controlled by means of functioning statutory international organisations. These organisations must cooperate closely with each other, in order to avoid the implementation of conflicting measures and strategies, especially in regions whose economic development depends on international assistance and programmes set up by international organisations.
2. Free market growth and increased trade may bring long-term benefits globally<sup>4</sup>, but the presence of international organisations and regulations is necessary to avoid the short-term negative effects of unregulated liberalisation on the countries with the weakest economies and to stave off isolated unilateral, bilateral or multilateral regulations that reinstate boundaries and obstacles to the free movement of goods and services. This need is met by the WTO, which was established following lengthy international negotiations with the voluntary involvement of the overwhelming majority of the world's nations.

3. Despite all the good intentions (UN Millennium Summit, UN World Food Summit, UN World Summit on Sustainable Development) and the various initiatives and programmes to be found worldwide, one fifth of humanity<sup>5</sup> lives below the international poverty line (which is set at \$1 a day) and this demonstrates the enormity of the challenge facing the strong players in the global economy and the inadequacy of the policies developed to date. The desperate living conditions<sup>6</sup> of a large section of the world's population generate chain reactions with uncontrollable consequences.
4. The reactions of organised civil society, NGOs and social partners included, to all the deliberations of the international organisations illustrate the enormity of the problem around the world. **The message that is starting to be taken seriously by all the international organisations, and above all by the WTO, is the need to trace out an international strategy to promote the balanced development and prosperity of nations and to secure and deepen democracy throughout the world.** In reality, the difficult current social and economic circumstances call for international cooperation between the developed and the developing countries, either through existing international organisations or by creating new ones where required.
5. The liberalisation of markets and of international trade over the last decade has brought some of the least developed countries (LDC)<sup>7</sup> an opportunity to improve their people's income more rapidly than ever in the last 50 years<sup>8</sup>. A number of typical examples highlight the benefits gained by the developing countries from free trade. The reduction in trade barriers both to developing countries and LDCs will bring annual earnings of \$250 to \$620 billion from 2002, of which a third will supplement the incomes of the LDCs<sup>9</sup>. The cut in farm subsidies will also increase global earnings by \$128 billion a year, of which \$30 billion will be transferred to the LDCs.
6. A group of 18 developing countries, including Bangladesh, China, India, Ghana, Nepal, Uganda and Vietnam, have increased their export levels as a proportion of GDP very rapidly since 1980. Many experts believe that this has been due to opening up their markets to international competition<sup>10</sup>, but there are also opposing theories on the subject.
7. The increase in the income of the poorest 20% of developing countries is greater than the corresponding increase in the remaining 80%. This has been demonstrated in East Asia, a region that accounts for more than a third of the population of the developing world. Over the last 40 years, this region has been transformed from being one of the poorest regions in the world into its current dynamic form.
8. Despite the improvement in their economic indicators, these countries still have a long way to go. On the other hand, it is an undeniable fact that the ratio of the GDP of the top 5% richest countries to that of the bottom 5% poorest on Earth has risen from 30:1 when the GATT was launched at the end of the 1940s to 78:1 today. This is even clearer in the social sector. Their economic growth has not been matched by social progress or the consolidation and development of democratic institutions and individual rights. There has been

little improvement in the Human Development Indicators that measure improvements in living conditions, education and life expectancy.

9. The fact that most developing countries' economies continue to be directly dependent on farm products<sup>11</sup>, coupled with the major problems of exports in processed agricultural products, is a basic problem of the international trade and economic system and has a direct social impact, owing to the variability of world prices and the fall in the prices of these products over the medium to long term<sup>12</sup>. At least 50 developing countries depend on their primary sector for a third of their export income, and for 40 of them it provides half their income<sup>13</sup>.
10. The EU is making a very real effort to bring the developing countries and LDCs into the global economy<sup>14</sup>. The Cotonou Agreement (23.6.2000) drawn up between the EU and the African, Caribbean and Pacific countries is a major initiative that combines trade with development, and also includes a set of trade liberalisation measures (the "Everything But Arms" initiative), which allows tariff-free exports from all the LDCs to the EU, with the exception of arms, within the next few years. Similarly, the review of the European Generalised System of Preferences (2002-2004) put the emphasis on tariff reductions for the LDCs and also introduced a real initiative clause (including penalties) relating to respect for basic labour and environmental standards.
11. The EU uses every opportunity in multilateral talks to promote an ongoing course of development for the LDCs. The International Conference on Financing for Development held in Monterrey (Mexico) on 18-22 March 2002 was a further step forward, while the EU and the United States undertook to earmark an additional 30 billion dollars for development from 2004, the greatest ever increase in aid to date. This commitment was also a major challenge and invitation to the World Summit on Sustainable Development held in Johannesburg in August 2002, but it proved impossible for the developed countries to arrive at a clear commitment on specific measures designed to reduce the North-South divide, and to establish rules to contribute to sustainable development.
12. The preconditions for global sustainable development are: the alleviation (or even elimination) of Third World debt<sup>15</sup>, reducing unemployment and applying international labour standards as an objective target, paying particular attention with regard to the earth's ecosystem and the protection of public health.
13. To achieve the above, the developed countries, which have the greatest responsibility, must: a) open up their markets to LDC products, b) transfer resources and know-how to the developing countries in substantial quantities, and c) help sensitise and improve representativeness in the workings of the administrative structures of international organisations. Meanwhile, the developing countries must: a) adopt the principles of transparency, b) establish effective government, c) adopt the basic principles of democracy, d) eradicate internal corruption, e) establish fully functional markets, f) take on board international labour standards and g) set feasible macroeconomic objectives. Trade liberalisation can bring the LDCs<sup>16</sup> economic progress, provided, however, that the strong economies take substantive measures that go beyond

the meagre economic aid in the traditional sense that they already provide and invest in the necessary structural changes, particularly in basic infrastructure, and that the developing countries develop their capacity to operate in a competitive environment through programmes that support entrepreneurship and the development of small and medium-sized businesses and ensure rules on transparency for the use of international economic aid so as to combat corruption.

14. As an international organisation, the WTO has many major advantages in terms of intervention:

- It promotes the liberalisation of trade and is an expression of the desire for international regulation of global commercial activity in the current context of globalisation.
- It is institutionally an intergovernmental-multinational body.
- The decision-making method it has adopted, which is based on a consensus of the members<sup>17</sup>, or if there is none, recourse to a vote requiring a broad majority of members, gives it a major advantage over other international organisations, such as the IMF or the World Bank, in terms of democracy.
- The high number of member countries (144) with all their major economic and social differences encompass the whole range of the world's diversity.
- With this structure, in addition to promoting trade negotiations and resolving trade disputes, the WTO can and must aim a) to strengthen the developing countries, b) to promote the just and fair distribution of work around the world and c) to introduce standards to protect the environment and food safety and hygiene, always in accordance with its rules and strategic objectives.

15. For most of the earth's population, the benefits of the reduction in trade protectionism to date have yet to be seen. For this reason, the protests of civil society organisations directed against international bodies and especially the WTO, the main exponent of trade liberalisation, are growing increasingly loud. The challenge for everyone, and especially for the governments of the developing and least developed countries, is to make trade and international investment a driving force for development and the reduction of poverty.

16. The EESC, in its capacity as the main institutional representative at EU level of civil society organisations, plays an active role in global dialogue and has

taken all the current messages into account. As a result, it would suggest that the WTO needs to take on a more human face. This necessity arises, on the one hand, from the fact that in today's globalised economy, international trade agreements have implications for work, health and the environment, and on the other, from the fact that any interventions should take place with the approval and input of civil society, through practical participatory procedures.

### 3. **Developments in the world trade dialogue (Doha Development Agenda)**

1. The Doha Development Agenda from the 4th Ministerial Conference in Doha marked a positive step forward for the future of world trade and gave some hope for the new round of negotiations that started in January 2003 and will last until January 2005, setting as key objectives: a) sustainable development at the centre of trade negotiations<sup>18</sup>; b) supporting growth in the developing countries and the LDCs and c) tackling the scourge of epidemics in the LDCs. The decision to supply development aid to foster economic and institutional progress in the developing countries was in essence the realisation of preexisting WTO agreements<sup>19</sup>. It was also decided that the TRIPS intellectual property rights agreement should be applied without preventing Member States from taking the necessary measures to protect public health (patents on pharmaceutical products).
  2. In its opinion of October 2001<sup>20</sup> on the preparations for the Doha conference, the EESC expressed the wish that the conference do more than Seattle to take into account the aspirations and problems of the developing countries. The Committee pointed out that the dialogue on social issues and the environment comes up against major obstacles owing to the fact that the developing countries focus their interest on other issues, such as implementation, development and access to markets.
  3. In the statement issued after the meeting between **Commissioner P. Lamy** and representatives of civil society on 14 December 2001, it was noted that, except for the problem of social questions relating to labour, the Commission's main objectives for Doha had been met and that a major decision had been taken in the context of the Doha Development Agenda on a commitment to supply technical assistance to the developing countries and to promote capacity building. This will be implemented in full cooperation with all the donors such as the World Bank and UNCTAD, and through the Community Development Policy and Development Programmes<sup>21</sup>.
  4. The EESC welcomes the efforts made by the Commission to persuade the WTO's General Council to set up a Global Trust Fund to administer technical assistance to the developing countries so that they participate fully in negotiations.
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5. The EESC expresses its great concern at the delays occurring in the promotion of the items on the Doha Development Agenda and calls on the developed and developing countries to move immediately towards completion of the necessary negotiations.

## **5. The social dimension of trade negotiations**

### **1. Social rights in the workplace**

1. The consolidation of social rights in the work place was a subject of discussion for the first time at the Singapore Ministerial Conference<sup>22</sup> and was reaffirmed at the Doha Ministerial Conference<sup>23</sup>, despite the objections of many developing countries.
2. The EESC feels it is necessary to kick-start the global debate on social rights and expresses its disappointment at the lack of interest and negative objections from the developing countries which emerged at the Doha Ministerial Conference.
3. Key point: the ESC feels that the best forum for addressing labour-related social issues is the ILO, as it also stated in its opinion on "Human Rights in the Workplace"<sup>24</sup>. The WTO must help to resolve these issues by encouraging positive measures and incorporating into its rules provisions to exclude members that breach international labour standards from the benefits of membership.
4. The EESC welcomes the Commission Communication published in July 2001 on labour standards and social governance in the context of globalisation.
5. The EESC firmly supports the work of the ILO and welcomes the creation of a World Commission on the Social Dimension of Globalisation, calling on the WTO to collaborate with it through substantive involvement. The World Commission may help the international community to gain a greater understanding of the complex problems of globalisation in the areas of labour and social development.
6. Furthermore, the EESC declares its readiness to begin cooperating formally with the WTO, the ILO and the national ESCs on current social issues.
7. The EESC would stress the need to establish core labour standards and to promote health and safety standards in the workplace, during the new round of trade negotiations. In addition, it emphasises the need for deterrent measures in the developing countries to discourage child labour.
8. The EESC will work to set up a permanent consultation procedure between itself and the ILO's World Commission, on the subject of the "social dimension of globalisation" and calls on the WTO to give the ILO observer status not only at its ministerial conferences but also within its other bodies<sup>25</sup>.

### **2. Trade and the environment**

1. The EESC welcomes international efforts to protect the environment in all its aspects and expresses its strong desire to see negotiations and programmes speeded up and consolidated and objections lifted so as to achieve the optimum result.
2. The EESC supports the alignment of international trade development with the goal of sustainable development, as viable economic development is one of the three components of sustainable development. Major ecological challenges and important environmental changes at global level oblige the

international organisations to focus their attention on succeeding in this aim. This is all the more imperative in view of the relative progress made at the Johannesburg Conference on issues relating to environmental protection.

3. Key point: the ESC welcomes the fact that the Doha Declaration<sup>26</sup> includes an agreement between WTO members to discuss environmental issues affected by trade. The discussion that followed enabled certain initial conclusions to be drawn, which will have to be taken up in future, despite the concerns expressed by various parties.

### 3. Intellectual property rights and public health

1. The major epidemics (HIV/AIDS, malaria) which continue mainly to afflict the populations of the LDCs and in particular the countries of Sub-Saharan Africa, are a major blot on modern culture and divide humanity into those who have access to basic medical treatment and those who for economic reasons do not<sup>27</sup>.
2. The EESC:
  6. believes that the right to health is the most valuable and important human right;
  7. points out that countries which do not produce medical drugs are at a major disadvantage in comparison to those that do;
  8. welcomes the special statement in the Doha Ministerial Declaration<sup>28</sup> on the right of states to protect their public health;
  9. welcomes the decisions of the TRIPS Council (27.6.2002) extending protection of intellectual property rights until 2016 for the LDC;
  10. feels that a flexible global agreement is needed which will fully meet the LDCs' public health needs arising from the spread of epidemics while safeguarding intellectual property rights so that research and technical development is not discontinued;
  11. emphasises the particular role which the WHO is called on to play as the relevant body with responsibility for monitoring and combating diseases which develop into epidemics threatening large numbers of people;
  12. believes that there is a direct link between public health and the reduction of poverty, which is an equally major problem across the globe;
  13. agrees with the European Parliament Resolution of 12 February 2003 on generic medicines (p5 – TA-PROV (2003) 0052/ 12.02.2003);
  14. believes that new medical discoveries should be more easily accessible for LDCs.
    3. The EESC supports the Commission's determined efforts to secure agreement among WTO members as soon as possible laying down: a) the list of states which have the right to circumvent WTO agreements<sup>29</sup> on the protection of intellectual property rights for public health reasons, b) an expanded version of Article 31(f) of the WTO's TRIPS Agreement allowing insertion of a derogation clause for pharmaceutical products and c) a definition of the term "pharmaceutical products"<sup>30</sup>.
    4. The EESC calls on all members of the WTO, especially the USA, to lose no time in overcoming the obstacles to

negotiations on amending Article 31(f) of the WTO TRIPS Agreement and reaching a global agreement.

5. On the major subject of the protection of public health and intellectual property rights, the EESC proposes: a) in addition to AIDS/ HIV and malaria, extending the suspension of protection for intellectual property rights on drug patents to include other major diseases as proposed by the Commission, b) extending the list of LDCs from the current 49 to 72, with the exception of China, which has the capability to produce primary pharmaceuticals, c) doing away with governmental – political interference with exports of pharmaceuticals when the health of a large proportion of the population is in danger, d) that the LDCs take tough measures to address the illegal resale of medicines sold to combat diseases on international markets at prices that do not reflect intellectual property rights, and e) that there should be flexibility in the whole system and in the ways Agreements are interpreted so that epidemic risks can be addressed effectively.

## 2. **Balance in world food needs**

1. Key point: the ESC would stress the need to strike a balance between the continuing growth of world food needs and the huge inequality in the distribution of food around the world<sup>31</sup> and the need for a broader international consensus on the important issues in agriculture.
2. Key point: the EESC endorses the position of the Food and Agriculture Organisation (FAO), that improving the effectiveness of water management systems, improving crop productivity (more crops per drop) and developing new sources of water are the key to satisfying the constantly growing demand for food<sup>32</sup>.

## 15. **The need to overhaul the WTO's operations**

### 1. **WTO views on its operations**

1. The WTO has evolved from a forum for technical trade negotiations into an intergovernmental organisation that administers global trade policy through the trade ministers of its Member States. Trade agreements are enforced, on the one hand, by the trade policy review mechanism, (TPRM) and on the other through the WTO's effective dispute settlement mechanism and, if necessary, the imposition of trade sanctions. It is therefore absolutely clear that the WTO must operate at global level in a completely transparent way.
2. The WTO now maintains that:<sup>33</sup> a) it has made adequate progress in the area of transparency since GATT; b) it has a well-organised web site through which the general public has access to its documents and decisions; c) it has developed a serious dialogue with parliamentary representatives, chambers of commerce, workers' unions and organised civil society by means of symposia; d) it has established short- and long-term educational programmes<sup>34</sup> and six-monthly "Geneva Weeks" to which the poorest of the LDCs are invited to be informed on international trade developments and the Doha Development

Agenda negotiations, with all their costs covered by the WTO budget; this programme is also designed to develop the trade negotiation capacities of LDC representatives; and e) the WTO works closely with other international organisations to promote additional technical assistance for the LDCs, such as the Integrated Framework (IF), a combined initiative of the IMF, the International Trade Centre, UNCTAD, UNDP, the World Bank, and the Joint Integrated Technical Assistance Programme (JITAP), set up to help the poorest LDCs take part in world trade negotiations. Despite this, the WTO administration recognises that there is a need for it to become more democratic and to assist the developing countries in becoming fully involved in its work and decision-making.

## 2. **The Commission's views on the WTO's operations**

1. Before the Doha Ministerial Conference, the Commission, through **Commissioner P. Lamy**, set up specialist study groups with socio-occupational interest groups and NGOs and formulated specific proposals for the reform of WTO procedures and operations, while repeatedly noting the need for greater technical support to be given to the developing countries in order for them to develop the capacity to take part in the procedures. In the Commission's view, the main issues requiring immediate attention are transparency, greater information and publicity and the essential participation of the developing countries, given that they number 100 of the 144 members. With the start of the new round of negotiations, the Commission's proposals for the WTO's informal operations and mechanisms in future include the following:

a) annual open meetings with parliamentarians of WTO members and the public, as a means of highlighting the policy issues that affect the trade system;

b) the development of better consultation procedures to reach consensus on matters such as transparency and participation, naturally ensuring that the organisation's operations remain effective;

c) the creation of a small consultative group with no decision-making powers, to advise the director-general when required on current recommendations to the General Council.

The EESC agrees in principle with the Commission's views, but as far as the proposal for the creation of an consultative group is concerned, it believes that it will first be necessary to establish the required selection criteria for members, so as to ensure as far as possible that the selection process is totally above board and effective with the greatest possible degree of flexibility, and that the body is then established with clear and distinct responsibilities.

## 3. **The EESC's views on the WTO's operations**

1. The EESC has contributed a great deal to the Commission's efforts to set up a structured dialogue with civil society not only at European level, but also at world level by promoting dialogue with civil society players in e.g. the Euromed countries, the ACP countries, Latin America, China, India, etc. The EESC wholeheartedly endorses the Commission's views and congratulates it on the considerable effort it has put into giving the WTO a more human face and for establishing a structured and meaningful dialogue with civil society.
2. Having repeatedly expressed its views on the issues of transparency and the more active involvement of civil society players in the WTO's procedures, despite strong objections from many LDCs, which have a major "democratic deficit"<sup>35 36</sup>, the EESC believes that the time is ripe for the process of reforming the WTO's operations, making for greater transparency and democracy, while maintaining its intergovernmental nature.
3. One of the most significant issues raised by the socio-occupational groups and NGOs is the level of external and internal transparency in the WTO's procedures and operations. Further progress in the area of transparency could also secure greater efficiency for all WTO members, especially in decision-making.

On this note, the EESC accepts the following points:

1. **Access to WTO documentation and records**
  1. One of the most serious criticisms levelled at the WTO, as regards the transparency of its operations, concerns freedom of access to its documents and the way they are distributed and circulated. Following an important decision taken recently by the General Council<sup>37</sup>, all WTO documents are to be made freely available, with the exception of certain cases where a State may ask for a document's circulation to be restricted for a maximum of 90 days.
  2. The EESC welcomes this decision and calls on the General Council to continue to review the issue of greater transparency in the WTO's bureaucratic operations.
2. **Consultation of civil society – The role of NGOs**
  1. External transparency in WTO matters<sup>38</sup> can be achieved primarily at national level. A dialogue between national governments and civil society representatives on WTO matters would not only help in securing consensus but would also convey more information and knowledge to other stakeholders affected by the WTO's decisions, such as businesses, workers,

consumers, stock markets, importers and suppliers. This process of providing information would further promote globalisation and trade liberalisation. At the same time, governments would have the opportunity to obtain significant assistance from the specialised consultative support of the groups and organisations concerned, such as national trade and industry associations. Some of the LDCs undoubtedly have a major "democratic deficit" problem, a very low level of civil society representation and a virtual absence of consultation between social players and NGOs. The WTO should follow the same procedure at international level, in conjunction with international civil society players, taking as its example the successful cooperation between the Commission and civil society at European level on WTO matters.

2. The role of NGOs has been the subject of frequent discussions between WTO members. The WTO has repeatedly stated that the interests of all a country's citizens are only expressed by the official government. However, this restriction does not exclude relations between WTO members and the representatives of NGOs<sup>39</sup>. The first Ministerial Conference in Singapore in 1996 was attended by representatives from 108 NGOs. At the Doha Conference, the number of NGO representatives registered was over 600.
3. The EESC highlights the special role played by NGOs<sup>40</sup>, which do not include the social partners, i.e. employers and workers, in dealing with particularly sensitive social issues and recognises that the interests of a state's citizens must be represented by some players who are not dependent on the government of that state. However, essential requirements for this representation to be genuine and effective are that the representatives are democratically elected by significant segments of the population and that their financial management is transparent.
4. Having in previous opinions<sup>41</sup> defined the criteria of representativeness for NGOs at European level, the EESC proposes the following criteria which may also be used in NGO-WTO relations.

An NGO must:

16. exist permanently at global level, or over a large part of the planet;
  17. provide direct access to its members' expertise and hence rapid and constructive consultation;
  18. represent general concerns that tally with the interests of global society;
  19. comprise bodies that are recognised at national level as representative of particular interests;
  20. have member organisations in most of the WTO member countries;
  21. provide for accountability to its members;
  22. have authority to represent and act at global level;
  23. be independent and not bound by instructions from outside bodies;
5. The only official channels giving civil society access to WTO decisions have so far been the symposia and congresses held in parallel with the Ministerial Conferences where the WTO is represented by the accredited economic diplomats of its member countries. The representatives of civil society feel that this involvement is too low-key because of the very long time lapse between Ministerial Conferences and is still far removed from the day-to-day functioning of the WTO.
  6. The EESC agrees with the proposal by the Commission and the European Parliament that the WTO should adopt a specific procedure for consultation with the social partners and NGOs, and offers its services to the Commission to help achieve this. To ensure the mutual dialogue has a strong and viable foundation and to create a reliable institutional framework, it also proposes the establishment of a specific ethical code.
  7. The EESC would recommend that civil society operators have access to the daily running of the WTO by attending General Council meetings as observers.

**2. Access for parliaments and civil society to consultation procedures and the trade policy review mechanism (TPRM)**

1. The aim of the trade policy review mechanism (TPRM)<sup>42 43</sup> according to the founding articles of the WTO, is to monitor and contribute to improving members' compliance with the rules, regulations and commitments contained in the multilateral trade agreements, and to examine the repercussions of trade policies and practices for members' economies and for the multilateral trade system at regular intervals. In practice, however, a good many problems have been observed in particular when examining the impact of trade policies on the member states and the reliability of states' reports regarding not

so much economic as social and environmental data.

2. The EESC proposes mandatory involvement and consultation of national parliaments and civil society organisations in shaping the decisions on commercial, political and national reports submitted under the TPRM before the official texts are published.

**3. Process of informing civil society of progress made in negotiations**

1. Civil society could be informed of the progress made in the new round of negotiations by means of a specific procedure at national or regional level and, of course, through the WTO secretariat, by means of special open seminars, held at fixed intervals as required.

**4. The role of Economic and Social Councils**

1. The WTO ought to set up a group of interlocutors representing a large portion of civil society. Economic and social councils, where they exist, are a very good potential interlocutor for the development of regular cooperation with the WTO.
2. The EESC calls for greater involvement of the Economic and Social Councils, in countries where they exist, in the work of the WTO, and the establishment of similar bodies in the developing countries where there is a serious democratic deficit and a lack of social consultation.
3. The EESC proposes that it take the initiative of coordinating Economic and Social Councils where these exist worldwide (e.g. African ESCs, Chinese ESC, etc) on WTO matters by drawing up joint opinions to be presented at the Ministerial Conferences as the contribution of civil society.

**5. Establishment of a specific code of conduct for communication with civil society**

1. Most international organisations, such as the United Nations, the World Bank, and the Organisation for Economic Cooperation and Development have, to varying degrees, mechanisms for consultation with civil society organisations and for the mutual exchange of information. The WTO claims that it is different from the other organisations in that its decisions are not simply binding, but are enforced, sometimes with penalties such as trade sanctions; this argument does not hold water as other international organisations have similar

procedures such as drafting and monitoring agreements and settling disputes.

2. The EESC reaffirms the basic principles of the code of conduct set out in previous opinions<sup>44</sup>. Such a code could also include the following:

24. a clear declaration rejecting any form of coercion and promoting mutual dialogue;
25. the commitments of the signatory socio-professional organisations and NGOs to conform to certain rules on transparency (mission, members, organisation, funding etc.);
26. the commitments of the WTO Secretariat as regards the organisation of these consultations (reporting and access to documents, consultations, information provision, evaluations, Internet forums etc.). Specifically, the Secretariat could make provision for holding an annual public hearing;
27. an invitation to the representatives of the information society and NGOs to take part in publicity campaigns, in studies of situations and challenges, taking on responsibilities in the context of the WTO's activities, as well as submitting any useful proposal on matters related to the WTO's activities to the WTO bodies, supporting implementation of the WTO's commitments and programmes, useful participation in groups and helping to identify problems and progress in implementing the plans;
28. an invitation to the WTO member countries to implement similar arrangements for consultation with the representatives of civil society and NGOs at European level.
  1. **Establishment of some kind of parliamentary supervision**
    1. The proposal by the Commission and the European Parliament to establish possible parliamentary supervision of trade policies would help to increase WTO transparency and to supply the Member States with more information but, most of all, would contribute to making the WTO's operations and decision-making procedures more democratic.
    2. Parliamentary supervision would also contribute to greater understanding of the economic and

social implications of trade policies for each individual member state.

3. The EESC is in favour of introducing a parliamentary dimension to the WTO, despite the inherent difficulties, as, apart from ministerial conferences, member states are represented by officials rather than elected representatives in the work done by the General Council in the intervening periods. It therefore calls on the EU and the WTO Secretariat to work to achieve this.

## 2. **Civil society access to the dispute settlement system**

1. Organised civil society has no access to the meetings of the special panels of the Dispute Settlement Body (DSB) or to the proceedings of the second level of arbitration, the Appellate Body. As a rule, these bodies operate in accordance with the rules of international public law and, as far as civil society bodies are concerned, there is no reason why there should not be free access to information on developments and decisions concerning trade negotiation disputes as soon as the parties concerned have been informed.
2. Article 13 (1) of the Understanding on rules and procedures governing the settlement of disputes clearly states that each panel has the right to seek information and technical advice from any individual or body which it deems appropriate, and that confidential information that is supplied to the panel must not be revealed without the express authorisation of the individual, organisation or authority that provided it. Furthermore, the panels can request information from any relevant source and consult experts to get their views on certain aspects of the matter. In practice, however, the contribution of organised civil society has been minimal to date.
3. The EESC is in favour of civil society involvement in the dispute settlement mechanism, to offer advice on matters that require specialist knowledge such as issues relating to work, the environment and health, for the following reasons: a) the participants in the panels and in the Appellate Body are usually experts on international trade law, etc. and b) often the trade agreements in question have a direct or indirect impact on social developments, for instance on a country's unemployment situation, on the environment, on health, or on economic development, etc.

4. The EESC asks the LDCs to put aside their objections to representatives of civil society being involved in the dispute settlement mechanism and supports the Commission's position on this matter, which will increase the WTO's transparency and democratic sensitivity.
2. **Developing the capacity of the developing countries and LDCs to take part in the WTO's institutional proceedings**
    0. Most of the developing countries and LDCs have a major or total lack of capacity to take part in the WTO's workings, to understand trade policies and their implications or to be aware of the regulations at regional and national as well as international level. Furthermore, in spite of substantial financial assistance from the Commission, they are often unable to have systematic representation on the WTO's various committees and meetings where major topics are negotiated as, on the one hand, they lack the right people with the appropriate qualifications and, on the other, they cannot cover the expense of permanent representations or delegations. The establishment of the representation office<sup>45</sup> for the African, Caribbean and Pacific (ACP) countries to support these countries in international trade negotiations marks a positive first step.
      1. The Doha Development Agenda includes a special reference to the LDCs' difficulties in participating in international trade negotiations and sets a specific timetable of support measures.<sup>46</sup>
      2. The EESC recommends ensuring that the developing countries have the financial and human resources to be able to implement the arrangements adopted.
      3. In the EESC's view, there is a constant need for more WTO appropriations to provide technical support and training for the LDCs in conjunction with the programmes of other international organisations, in order to enable them to take part in the WTO on an equal footing; meanwhile, controls on the funds made available should also be stepped up to ensure that they are not wasted and do not fall prey to corruption.
  3. **Reconciling the full involvement of members and the efficiency of the WTO's operations**
    0. The large number of members causes major problems when it comes to the necessary participation rate and presence on formal and informal institutional bodies. As well as institutionalising the reduced Ministerial Conferences, the EESC proposes setting up bodies with the limited participation of a manageable number of members, by choosing a selection and voting model that suits the WTO's purposes without compromising the basic democratic principle of one member – one vote.
  4. **Establishing institutionalised cooperation with other international organisations**
    0. In the current globalised economic and social context, it is important to be aware that trade does not happen in a vacuum and that trade negotiations are influenced by and influence the

decisions and policies of other international organisations. In the context of effective global cooperation, WTO cooperation with the other international organisations is essential.

1. WTO cooperation with UNCTAD on establishing the International Trade Centre (ITC), which is designed to help the developing countries and transition economies to take part in world trade, and promotion of the JITAR programme are useful international initiatives. WTO cooperation with the World Health Organisation<sup>47</sup>, the International Monetary Fund, the International Telecommunication Union, the World Bank and the World Intellectual Property Organisation<sup>48</sup> is also proving particularly useful .

#### 5. **Modifying the dispute settlement system**

0. On the basis of the experience gained with the Dispute Settlement Understanding over the last six years, the WTO accepts that despite its major contribution to solving trade disputes between the member states, the system needs improving on a number of counts. At the Doha Ministerial Conference, the members undertook to start negotiations on improving and updating the understanding with a view to concluding them by May 2003.
  1. The Commission has made specific proposals for the reform of the understanding, such as the appointment of delegates to take part in the panels on a permanent basis as opposed to the current case by case set-up, and on the subjects of implementation, transparency, faster decisions and rulings from the consultative judicial body, the possibility of submitting observations on an *amicus curiae* basis, etc.
  2. Although it supports these proposals, the EESC would like to point out that, to be fair and effective, a dispute settlement system should be based on the following principles: first, that every member state is equal before the law; second, the possibility of direct and proper access to the dispute settlement system; and third, compliance with international law. Nevertheless, it is highly doubtful whether the least developed countries are able to make proper use of the WTO system in its current form. Firstly, because the interpretation and application of the WTO's various regulations and agreements is becoming increasingly complicated and difficult. The EESC therefore judges it necessary to further strengthen and broaden the procedures for providing these countries with assistance, both financial and in the form of know-how and education to enable them to analyse, understand and properly apply all the WTO agreements. Secondly, the chances of these countries taking part and defending their interests before a panel or the Appellate Body are at present slim, owing to the complicated nature of the regulations and the fast pace of the proceedings. For this reason, the EESC believes that the start-up in 2001 of the Advisory Centre for WTO Law has filled a major gap. Already, the services provided by this centre are starting to bear real fruit (cf. the result of the dispute between Peru and the EU over the trade

description of sardines). In addition to the EU Member States, which have already offered considerable assistance for the establishment of the Centre, the other WTO members should also help in the further development and reinforcement of the Advisory Centre.

3. Despite major improvements, the WTO's dispute settlement system is not sufficiently supportive and accessible to the developing countries, which are a case apart owing to their fragile economies and are therefore unable to make the most of the mechanism's benefits.<sup>49</sup> The reasons for the developing countries not accessing or using the mechanism are the following: a) they do not have the domestic mechanisms for foreign trade that would channel the necessary information to governments, or require governments that are in violation of the rules to fall in line, b) there is a lack of awareness at national level of the WTO's regulations, conventions and mechanisms, c) their public administrations do not have the necessary knowledge or expertise, d) the political will is often lacking, e) they cannot afford expert advice.
4. The EESC is concerned at the lack of clarity in a number of WTO agreements which inevitably leads to appeals to the dispute settlement mechanism and calls on all parties involved to strive for clearer agreements.
  1. The EESC is also worried about the immediate and serious effect which some dispute-settlement cases have on private third parties (especially SMEs and consumers). The withdrawal of concessions by a WTO member does not penalise the state instigating the measure that infringes WTO rules or its authorities. Instead it is innocent firms which are penalised, with in some cases their very survival being threatened. Because WTO law is not directly applicable at the moment, these firms are virtually unable to seek legal redress from their state (or community of states) that has been proved to be acting illegally by the WTO dispute settlement procedure. This is not compatible with the legal principles in force in the European Union. In order to gain greater acceptance for the WTO dispute-settlement machinery and give it a stronger legal basis, the Commission – working in liaison with the Council of Ministers in the WTO but also at EU level – should act to rectify this shortcoming forthwith.
5. The EESC proposes the following on the subject of the dispute settlement system: a) increasing technical and legal assistance for LDCs, b) speeding up the procedures and in particular dispute settlement times distinguishing between cases in terms of their economic importance, where more minor cases (under \$1 million) would not be subject to all the mechanisms, c) further strengthening the Geneva office of the ACP countries, in order to compensate fully for their weaknesses, and d) increasing the presence of specialised civil society

representatives on the panels which carry out the initial investigation of infringements.

**6. Sanctions**

0. Sanctions are the WTO's weapon of last resort to enforce the rules and procedures agreed, as described in multilateral and plurilateral trade agreements, and they are applied when all measures foreseen by the dispute settlement understanding have been exhausted, and the infringement continues.
1. Imposing sanctions on one or more contracting States often affects a large group of States while often damaging trade for third parties or the LDCs.
2. It is, however, well known that the imposition of sanctions as a means of bringing pressure to bear on countries to comply with the decisions of a panel, the Appellate Body or the Dispute Settlement Body (DSB), is essentially impossible for the developing and less developed countries. All these countries are directly dependent on imports, and the result is that sanctions are not a viable alternative option. For this reason, the EESC supports the Commission's proposal to give these countries the opportunity to request, under certain conditions, the immediate payment of compensation or another form of compensatory trade advantage other than the right to impose trade sanctions.
3. The EESC is concerned at the increasing use of sanctions and believes that in trade relations it is preferable to find a compromise solution to differences rather than using legal means and sanctions. It calls on the WTO member states to launch a substantive debate on the sanctions applied under WTO statutes and the intermediate pre-sanction procedure proposed by the Commission which will allow a state to offer compensatory measures in cases of infringement. This debate must clarify all aspects of sanctions (when and how sanctions are imposed, and by whom) to secure greater flexibility and transparency.

Brussels, 26 March 2003.

The President

The Secretary-General

of the

of the

European Economic and Social Committee

European Economic and Social Committee

**Roger Briesch**

**Patrick Venturini**

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### **Abbreviations:**

WTO	World Trade Organisation
UNCTAD	United Nations Conference on Trade and Development
UN	United Nations
OECD	Organisation for Economic Cooperation and Development
WHO	World Health Organisation
FAO	World Food Organisation
EU	European Union
ITC	International Trade Centre
TA	Technical assistance
WB	World Bank
IMF	International Monetary Fund
TRIPS	Intellectual property rights agreement
ACP	African, Caribbean and Pacific countries
GATT	General Agreement on Tariffs and Trade
UNDP	UN Development Programme
DSB	Dispute Settlement Body

<sup>1</sup> European Parliament Resolution of 18 June 1998 on the Second Ministerial Conference of the World Trade Organization – OJ C 210, 6.7.1998

<sup>2</sup> European Parliament Resolution of 15 December 1999 on the Third Ministerial Conference of the World Trade Organization in Seattle – OJ C 296, 18.10.2000

<sup>3</sup> European Parliament – P.5 – TA(2002) 0389

<sup>4</sup> a) The World Bank estimates that the removal of all trade barriers will increase global income by USD 2.8 trn and will bring 320m people out of poverty by 2015.

b) European Parliament Resolution on the Communication from the Commission to the Council and the European Parliament on the EU's approach to the so-called WTO Millennium Round – A5-0062/1999 – OJ C 189, 7.7.2000

<sup>5</sup> WORLD BANK – ANNUAL REPORT 2002 – CHAPTER 1 – Meeting the Poverty Challenge: the World Bank's Goals and Strategies

<sup>6</sup> European Parliament Resolution on eradicating poverty – P5 TA(2002) 0389

<sup>7</sup> 30 of the 49 least developed UN member states belong to the WTO; they are the following: Angola, Bangladesh, Benin, Burkina Faso, Burundi, Central African Republic, Chad, Djibouti, Gambia, Guinea-Bissau, Guinea-Conakry, Haiti, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Nigeria, Rwanda, Sierra Leone, Senegal, Solomon Islands, Tanzania, Togo, Uganda, Zaire and Zambia (WT/COMTD/LCD/W/26, 8 May 2002).

Nine even less developed countries are in the process of joining; they are: Bhutan, Cambodia, Cape Verde, Lao People's Democratic Republic, Nepal, Samoa, Sudan, Vanuatu and Yemen (WT/COMTD/LCD/W/26, 8 May 2002).

<sup>8</sup> European Parliament Resolution on openness and democracy in international trade A5 – 0331/2001, OJ C 112E, 9.5.2002

<sup>9</sup> a) WTO – OVERVIEW OF DEVELOPMENTS IN THE INTERNATIONAL TRADING ENVIRONMENT – WT/TPR/OV/8-15.11.2002

b) IMF and WORLD BANK, Market Access for Developing Country Exports, Selected Issues, 27 Sept. 2002, p.5

<sup>10</sup> David Dollar, Aart Kraay, "Growth is Good for the Poor", World Bank

<sup>11</sup> European Parliament Resolution on the Communication from the Commission to the Council and the European Parliament on the EU's approach to the so-called WTO Millennium Round – A5-0062/1999 – OJ C 189, 7.7.2000

<sup>12</sup> WTO – Annual Report 2002, § 17

<sup>13</sup> UNCTAD, 2002 – The least-developed Countries Report 2002: Escaping the Poverty Trap, Part II, Chapter 3. Trade Part II, Chapter 3-4, UNCTAD, Geneva

<sup>14</sup> Trade Policy Review of the European Union 2002 – p. 20 "Rigged Rules and Double Standards-trade globalisation and the fight against poverty – (Comments from the Commission – 17.4.2002)

<sup>15</sup> A Genuine Development Agenda for the Doha round of WTO negotiations, Joint Statement, 28.1.2002, From: Save the children, (OAFOD, OXFAM, ACTIONAID, WORLDVISION, CHRISTIAN AID, FAIRTRADE, TRADCRAFT §14

16 a) COM 2002) 513/F – 18.9.2002 – Communication from the Commission to the Council and the European Parliament: Trade and Development: assisting developing countries to benefit from trade

b) Council of the European Union: Trade and Development Council conclusions, 20.11.2002, No 14514/02

17 Marrakesh Agreement Establishing the World Trade Organisation – Article IX, Paragraph 1

18 If the Doha Development Agenda objectives are achieved, "Estimates of the welfare gains from eliminating barriers to merchandise trade—in both industrial and developing countries—range from US\$250 billion to US\$620 billion annually, with about one-third to one-half accruing to developing countries" (IMF and World Bank, Market Access for Developing Country Exports – Selected Issues, 27.9.2002, p. 5)

19 Overview of Developments in the International Trading Environment - § 97 – WT/TPR/OV/8 – 15.11.2002

20 EESC Opinion, OJ C 36 of 8.2.2002

21 Communication – April 2000 / Council Conclusions – 10.11.2002

22 Singapore Ministerial Declaration – Article ...

23 Doha Ministerial Declaration, Article 8 - WT/MIN(01)/DEC/1-20.11.2001

24 EESC Opinion CES 933/2001

25 European Parliament Resolution on the Communication from the Commission to the Council and the European Parliament on the EU's approach to the so-called WTO Millennium Round A5 – 0062/1999.

26 Doha Ministerial Declaration, Articles 31-33 - WT/MIN(01)/DEC/1-20.11.2001

27 More than 15m people die each year from infectious diseases and 40m have HIV/AIDS – many of these people cannot afford the medicines that would save or prolong their lives. – Oxfam News

28 Declaration on the Agreement to Protect Intellectual Rights and Public Health – WT/MIN(01) DEC/2-20.11.2001

29 WTO TRIPS AGREEMENT – Article 31

30 a) DG Trade: Contribution to the WTO: Communication from the European Committees and their Member States to the TRIPS Council Relating to Paragraph 6 of the Doha Declaration on the TRIPS Agreement and public health, 18.6.2002

b) WTO TRIPS Council – 16.12.2002 – Draft compromise decision (Perex Motta text)

c) Letter from Commissioner P. Lamy to the Ministers of the WTO Member States – 7.1.2003 – 5/6

d) WTO TRIPS Council – 4.3.2002 (IP/C/W/339)

e) WTO Committee on Trade and Development: The WTO WORK PROGRAMME ON SPECIAL AND DIFFERENTIAL TREATMENT – Communication from the European Committees – TN/CTD/W/26 – 11.12.2002

f) WTO Committee on Trade and Development: MONITORING MECHANISM FOR SPECIAL AND DIFFERENTIAL (S&D) TREATMENT PROVISIONS – Joint Communication for the African Group in the WTO – TN/CTD/W/23-11.12.2002

31 Doha Ministerial Declaration, Article 13 - WT/MIN(01)/DEC/1-20.11.2001

32 26th FAO Regional Conference for the Near East, 9-13.3.2002

33 Annual Report 2002

34 a) WT/COMTD/W/89/Rev. 1, 14.1.2002 – b) WTO Training Institute, WTO Trade Policy Courses: A proposal for Expansion

35 EESC Opinion, OJ C 368 of 20.12.1999

36 EESC Opinion, OJ C 36 of 8.2.2002

- 37 W.T.O – Procedures for the circulation and derestriction of WTO documents (14.5.2002) – WT/L/452 – 16.5.2002
- 38 G. Marceau and P. Pedersen, Is the WTO open and transparent? A discussion of the relationship of the WTO with non-governmental organisations and civil society's claim for more transparency and public participation, J.W.T. Vol. 33 No. 1, pp 5-49 (1999)
- 39 Relations between the WTO and NGOs are detailed in Article V:2 of the Marrakesh Agreement and the General Council directives of 18 June 1996 (WT/L/162)
- 40 International Centre for Trade and Sustainable Development – ICTSD – Association Schemes and Other Arrangements for Public Participation in International Fora
- 41 CES 19/2002
- 42 Agreement establishing the World Trade Organisation, Article III (4)
- 43 Agreement establishing the World Trade Organisation, Article III (3)
- 44 EESC Opinion on the preparation of the 4th WTO Ministerial Conference in Qatar: ESC position, points 3.9, 3.9.1, 3.9.2, 3.9.3, 3.9.4, 3.9.5, OJ C 36 of 8.2.2002
- 45 This office has been funded by the EU at a cost of €1.4 m.
- 46 Doha ministerial decision– support measures - WT/MIN(01) / 17-20.11.2001
- 47 WTO Agreements and Public Health – 20.8.2002
- 48 WT/COMTD/W/102, 16.7.2002

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