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**To: Members of the Executive Board**  
**From: The Acting Secretary**  
**Subject: The World Trade Organization - Institutional Aspects**

Attached for consideration by the Executive Directors is the paper on the institutional aspects of the World Trade Organization. Conclusion appears on page 26. This subject, together with the paper on the legal aspects of the relationship of the World Trade Organization with the Fund (SM/94/303, 12/20/94), is tentatively scheduled for discussion on Friday, January 6, 1995.

Mr. Holder (ext. 37792) or Ms. Siegel (ext. 37711) is available to answer technical or factual questions relating to this paper prior to the Board discussion.

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INTERNATIONAL MONETARY FUND

The World Trade Organization --  
Institutional Aspects

Prepared by the Legal Department

(In consultation with Policy Development and Review  
Department and the Office in Geneva)

Approved by François Gianviti

December 19, 1994

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## Introduction

The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations (Final Act) 1/ includes the Agreement Establishing the World Trade Organization (WTO). 2/ Attached to the WTO Agreement are a number of Annexes incorporating both the amended text of the original General Agreement on Tariffs and Trade adopted in 1947 (GATT 1947) and new Agreements, including those on services and intellectual property.

At the Implementation Conference held on December 8, 1994 pursuant to paragraph 3 of the Final Act, it was decided that the WTO Agreement, together with the Multilateral Trade Agreements annexed thereto, shall enter into force on January 1, 1995. Thus, the WTO will come into existence on that date.

With the entry into force of this Agreement, the WTO will be established as a new international organization. It will facilitate the administration of the Agreements on trade in goods (GATT 1994 and related Agreements), trade in services (GATS) and trade related aspects of intellectual property (TRIPS) that are annexed to the WTO Agreement. 3/ It will administer the Dispute Settlement Understanding and the Trade Policy Review Mechanism, which are also annexed to the Agreement

This paper reviews the main institutional aspects of the WTO. Section I provides historical background to the establishment of the WTO, describing the context for the drafting of the existing GATT 1947 and the failure to establish an international organization at that time. Section II describes the future WTO, focusing on its mandate and institutional features. Sections III and IV provide an overview of the dispute resolution mechanism and the Trade Policy Review Mechanism, respectively, to be administered by the WTO. The legal aspects of the relationship of the WTO with the Fund are described in SM/94/303 (12/20/94). 4/

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1/ April 15, 1994 (hereinafter cited as Final Act). For a factual survey and analysis of the Final Act, see "Conclusion of the Uruguay Round - An Agreed Final Act," SM/94/56 (March 1, 1994); and "Comprehensive Trade Paper - The Uruguay Round - Economic Implications," (SM/94/192, Sup. 1, 7/20/94) and, in particular, Appendix 1.

2/ Agreement Establishing the World Trade Organization, annexed to the Final Act, April 15, 1994 (hereinafter cited as WTO Agreement). A copy of the WTO Agreement is attached.

3/ WTO Agreement, Article II, paragraph 1.

4/ Cooperation between the Fund and the GATT/WTO, particularly regarding policy linkages, is also discussed in the "Comprehensive Trade Paper - Issues Paper," (SM/94/192, 7/19/94) and the "Statement by the Staff Representative on Collaboration with the World Trade Organization" (BUFF/94/93, (October 13, 1994)).

## I. Historical Background

The idea of an international trade organization was first put forward by the United States during World War II. It was subsequently discussed at the 1944 Bretton Woods Conference, which recommended that governments seek to reach agreement on ways and means to "reduce obstacles to international trade and in other ways promote mutually advantageous international commercial relations." 1/ It was envisaged that the ITO would exist alongside the Fund and the World Bank.

At the first meeting of the UN Economic and Social Council in February 1946, a resolution was adopted calling for the convening of a "United Nations Conference on Trade and Employment" with the purpose of drafting a charter for an international trade organization, and, to this end, a preparatory committee was set up. Before the preparatory committee convened, the United States published a "Suggested Charter for an International Trade Organization of the United Nations." 2/ The agenda for the proposed ITO was ambitious in that it included the formulation of rules on international commerce, restrictive business practices, international commodity agreements, as well as provisions on investment, fair labor standards and economic development and reconstruction. 3/

Between 1946 and 1948, four conferences were held (in London, New York, Geneva and Havana) to draft an agreement pursuant to the U.S. initiative and to finalize the ITO Charter; the first three of these were the UN preparatory committee meetings. Agreement on the Charter was reached at the Havana meeting in March 1948, but the ratification process was never completed. The Havana Charter failed to win U.S. ratification because of lack of Congressional support for its free trade policies, the submission of certain matters to international regulation (e.g., commodity arrangements), and the inability under the Charter to enforce rules for other matters (e.g., investment). 4/ Given the lack of U.S. support and other changes in the world setting between 1945 and 1950, other countries did not seek to bring the Havana Charter into force. 5/

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1/ Proceedings and Documents of the United Nations Monetary and Financial Conference, Bretton Woods. N. H., (July 1-22, 1948), Vol. I, p. 941.

2/ U.S. Department of State, Pub. No. 2598 (1946).

3/ Final Act and Related Documents: United Nations Conference on Trade and Employment, held at Havana, Cuba, (March 1948).

4/ Diebold, "The End of the ITO," Essays in International Finance (No. 16, 1952), p. 1. In December 1950, the U.S. State Department issued a press release reporting that the President had decided to withdraw the ITO from further consideration by the Congress (Press Release of December 6, 1950, reprinted in U.S. Department of State Bulletin, Vol. 23, p. 977).

5/ Diebold, op. cit., pp. 3-6. In 1955, a less complex Organization for Trade Cooperation was proposed by the United States to provide the institutional framework for the GATT, but this proposal also failed to gain approval of the U.S. Congress.

Independently of the initial work on a proposed ITO Charter, the United States had invited a number of other countries to enter into multilateral negotiations in 1945 with a view to adopting a multilateral trade agreement to reduce tariffs, replacing a series of bilateral negotiations that the United States government had been authorized to conduct under the 1934 Reciprocal Trade Agreements Act. "The basic idea for the GATT was that it would be an agreement to embody the results of the tariff negotiations, but that it would also include some of the general protective clauses which would prevent evasion of the tariff commitments." 1/ The negotiators intended that the tariff commitments of this general agreement would be annexed to the ITO Charter and that the ITO, with the assistance of its secretariat, would enforce the agreement.

The GATT was finalized at the Geneva conference on October 30, 1947, when 22 governments agreed to accept its legal obligations by signing a Protocol of Provisional Application (PPA), 2/ expecting that the treaty would eventually be appended to the ITO charter. The PPA includes a significant qualification providing that, in the case of inconsistency, existing mandatory domestic laws would prevail over the obligations in Part II of the GATT, which contains many important obligations such as national treatment, rules on customs procedures, subsidies, etc.

Notwithstanding its "provisional" status, the GATT has operated for almost 50 years, with amendments eventually made to include some of the commercial policy provisions of the Havana Charter. The GATT did not create an international organization endowed with legal personality, however, and there was no provision for privileges and immunities for the personnel of the Secretariat or the representatives of the contracting parties.

Over time, nonetheless, many attributes of a de facto international organization have developed. This has arisen primarily through the authority in Article XXV for the GATT signatories acting jointly, designated as the CONTRACTING PARTIES, to give effect to those provisions in the GATT "which involve joint action and, generally, with a view to facilitating the operation and furthering of the objectives of" the GATT. The CONTRACTING PARTIES have used this authority "to establish relations with states, international organizations and private persons, and to assume legal personality under international and municipal law for that purpose." 3/ The CONTRACTING PARTIES have also established a secretariat and various

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1/ Jackson & Davey, Legal Problems of International Economic Relations (1986), p. 294.

2/ Protocol of Provisional Application to the General Agreement on Tariffs and Trade, October 30, 1947, 55 U.N.T.S. 308.

3/ Roessler, "The Competence of GATT," Journal of World Trade Law (Vol. 21, 1987), p. 75. Mr. Roessler is Director, Legal Affairs Division, GATT Secretariat. See also Lowenfeld, "Remedies along With Rights: Institutional Reform in the New GATT," American Journal of International Law (Vol. 88, 1994), p. 477.

committees, and administered dispute resolution procedures. They have not concluded a specialized agency agreement with the United Nations, but, pursuant to a 1952 exchange of letters between the Secretary General of the United Nations and the Executive Secretary (now Director-General) of the GATT, various working arrangements have been agreed upon; they include membership of the Director-General in the Administrative Committee on Coordination, exchange of information and documents, reciprocal representation at meetings and coordination activities, as well as participation in inter-agency bodies. Additionally, in 1977 the Director-General of GATT (acting on behalf of the CONTRACTING PARTIES) concluded with the Swiss government an agreement extending to the GATT privileges and immunities similar to those conferred by the Convention on the Privileges and Immunities of the United Nations. 1/

## II. Description of the WTO

The WTO Agreement establishes the WTO with the full attributes of an international organization. Continuity with GATT 1947 is ensured by a provision requiring the new organization to be guided by the decisions, procedures and customary practices that developed under GATT 1947, except as otherwise provided. 2/ Similarly, to the extent practicable, the Secretariat of GATT 1947 will become the Secretariat of the WTO. 3/

While less ambitious than the ITO envisaged by the Havana Charter, the WTO's mandate is expanded to additional agreements on trade in goods, agreements on trade in services and on intellectual property rights, and agreed policies on dispute resolution and trade policy surveillance. The content of these agreements has been discussed in other staff papers; 4/ this Section provides an overview of the institutional aspects of the WTO, describing its scope, functions and institutional features.

### A. Mandate

#### 1. Scope

The WTO Agreement states that the WTO "shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments

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1/ Roessler, *op. cit.*, p. 81; 1 U.N.T.S. 15 (adopted by the General Assembly on February 13, 1946); *BISD*, 24S/8-9 (1977) (This citation format refers to Basic Instruments and Selected Documents of the GATT and, in this case, the 24th Supplement, pp. 8-9).

2/ WTO Agreement, Article XVI, paragraph 1. Citations in this section are to the WTO Agreement, unless otherwise specified.

3/ Article XVI, paragraph 2.

4/ SM/94/56, 3/1/94; SM/94/192, 7/19/94.

included in the Annexes to this Agreement." 1/ The WTO Agreement itself is entirely institutional, but it incorporates the substantive agreements resulting from the Uruguay Round as annexes. There are four annexes to the WTO Agreement; the agreements listed in the first three are binding on all members (Multilateral Trade Agreements), while the agreements in the fourth annex are only binding on the members that have accepted them (Plurilateral Trade Agreements).

- Annex 1 is organized as follows: Annex 1A--the Multilateral Agreements on Trade in Goods; Annex 1B--the General Agreement on Trade in Services (GATS); Annex 1C--the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).
- Annex 2 contains the Understanding on Rules and Procedures Governing the Settlement of Disputes.
- Annex 3 contains the Trade Policy Review Mechanism.
- Annex 4 contains the Plurilateral Trade Agreements, which are not signed by all WTO members and "do not create obligations or rights for members that have not accepted them." 2/

The Final Act also contains several Ministerial Declarations, Decisions, and Understandings that are an integral part of the Agreement. 3/ In contrast to the PPA that made parts of the GATT 1947 subject to exceptions for existing mandatory domestic laws inconsistent with GATT 1947, acceptance of the WTO Agreement and the Multilateral Trade Agreements generally does not allow the "grandfathering" of domestic law. 4/

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1/ WTO Agreement, Article II, paragraph 1.

2/ These four agreements are: Agreement on Trade in Civil Aircraft; Agreement on Government Procurement; International Dairy Agreement; and the Arrangement Regarding Bovine Meat. Compared to the January 1, 1995 goal for the entry into force for other agreements in the Final Act, the Plurilateral Agreements will enter into force on their own schedules (Final Act, paragraph 4).

3/ Final Act, paragraph 1.

4/ Article XVI, paragraphs 4 and 5. An exception applies that will, in particular, operate to grandfather U.S. restrictions on the use of foreign-built vessels for cabotage contained in the Jones Act (WTO Agreement, Annex 1A, GATT 1994, paragraph 3(a)).

## 2. Coexistence with GATT 1947

"GATT 1994" is included in the Agreements on Trade in Goods. 1/ The WTO Agreement does not address the issue of a member's continuing obligations to contracting parties under GATT 1947 that do not join the WTO. Contracting parties that do join the WTO are not required to withdraw from the former agreement, and, even if they eventually do so (which is the expectation noted by many of the negotiators), a transitional period where both agreements are in force will result. 2/ The coexistence of different obligations during such a transitional period raises several complex questions, including the extent to which GATT 1947's "most favored nation" clause would require a WTO member to continue to afford contracting parties to GATT 1947 concessions on trade in goods equivalent to that it affords to other WTO members. The withdrawal of WTO members from GATT 1947 raises other questions such as unresolved disputes under GATT 1947 and concessions to contracting parties in the process of joining the WTO.

A Preparatory Committee has been established, which has been considering transitional matters. 3/ For example, at its December 8, 1994

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1/ WTO Agreement, Annex 1.A. GATT 1994 consists of GATT 1947 (the original GATT, as amended before the Uruguay Round) plus specified protocols, decisions, and understandings. Apart from GATT 1994, the following Agreements on Trade in Goods are included in Annex 1A of the WTO Agreement:

- Agreement on Agriculture
- Agreement on the Application of Sanitary and Phytosanitary Measures
- Agreement on Textiles and Clothing
- Agreement on Technical Barriers to Trade
- Agreement on Trade-Related Investment Measures
- Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 (antidumping and countervailing duties)
- Agreement on the Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (customs valuation)
- Agreement on Preshipment Inspection
- Agreement on Rules of Origin
- Agreement on Import Licensing Procedures
- Agreement on Subsidies and Countervailing Measures
- Agreement on Safeguards

2/ Withdrawal from GATT 1947 takes effect six months after a written notice of withdrawal (Article XXXI).

3/ The Fund will continue its relationship with the CONTRACTING PARTIES under GATT 1947 as long as that treaty remains in force. This relationship is discussed in "The Relationship of the World Trade Organization with the Fund--Legal Aspects," op. cit.

meeting, the Preparatory Committee addressed the issue of complaints that have been filed, prior to the entry into force of the WTO Agreement, with national authorities under the Tokyo Round Codes on antidumping and subsidies. The Committee recommended that, with respect to WTO members that have withdrawn from these codes, for a period of two years, the provisions of these Codes continue to apply to any domestic investigations or reviews of such complaints and to any disputes between contracting parties arising out of any such investigations or reviews.

On the more general issue of the future coexistence of GATT 1947 with the WTO, the Preparatory Committee, on December 8, 1994, recommended the adoption of the following decision by the CONTRACTING PARTIES:

*"Noting that not all contracting parties to the GATT 1947 meeting the conditions for original membership in the World Trade Organization (hereinafter referred to as 'WTO') will be able to accept the Marrakesh Agreement Establishing the WTO (hereinafter referred to as 'WTO Agreement') as of its date of entry into force, and that the stability of multilateral trade relations would therefore be furthered if the GATT 1947 and the WTO Agreement were to co-exist for a limited period of time;*

*Considering that, during that period of co-existence, a contracting party which has become a Member of the WTO should not be under a legal obligation to extend the benefits accruing solely under the WTO Agreement to contracting parties that have not yet become WTO Members and should have the right to act in accordance with the WTO Agreement notwithstanding its obligations under the GATT 1947;*

*Desiring to end the period of co-existence on a date agreed in advance so as to provide predictability for policy makers and facilitate an orderly termination of the institutional framework of the GATT 1947;*

*Decide as follows:*

1. The contracting parties that are Members of the WTO may, notwithstanding the provisions of the GATT 1947,
  - (a) accord to products originating in or destined for a Member of the WTO the benefits to be accorded to such products solely as a result of concessions, commitments or other obligations assumed under the WTO Agreement without according such benefits to products originating in or destined for a contracting party that has not yet become a Member of the WTO; and
  - (b) maintain or adopt any measure consistent with the provisions of the WTO Agreement.
2. The provisions of Article XXIII of the GATT 1947 shall not apply:

- (a) to disputes brought against a contracting party which is a Member of the WTO if the dispute concerns a measure that is identified as a specific measure at issue in a request for the establishment of a panel made in accordance with Article 6 of the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 of the WTO Agreement and the dispute settlement proceedings following that request are being pursued or are completed; and
- (b) in respect of measures covered by paragraph 1 above.

- 3. The legal instruments through which the contracting parties apply the GATT 1947 are herewith terminated one year after the date of entry into force of the WTO Agreement. In the light of unforeseen circumstances, the CONTRACTING PARTIES may decide to postpone the date of termination by no more than one year."

### 3. Functions

The functions of the WTO are specified in Article III of the WTO Agreement.

First, the WTO is to "facilitate the implementation, administration and operation, and further the objectives," of the WTO Agreement and the Multilateral Trade Agreements. 1/

Second, the WTO is to "provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to [the WTO] Agreement." This function may include providing a forum for "further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference." 2/

Third, the WTO will administer dispute settlement under the covered agreements and the Trade Policy Review Mechanism, 3/ both of which are discussed below.

An additional function is specified as follows:

"With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International

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1/ Article III, paragraph 1. The WTO shall "also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements." Ibid.

2/ Article III, paragraph 2.

3/ Article III, paragraphs 3 and 4.

Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies." 1/

## B. Institutional features

### 1. Legal status

The WTO Agreement accords the WTO the attributes of an international organization, providing that it "shall have legal personality," and "shall be accorded by each of its Members such legal capacity as may be necessary for the exercise of its functions." Regarding privileges and immunities of the WTO, the WTO Agreement provides that members shall accord to the WTO such privileges and immunities as are necessary for the independent exercise of its functions. 2/

The provisions on the capacity and privileges and immunities of the WTO are not self-executing; they are similar to the provisions in the Charter of the United Nations on the capacity and privileges and immunities of the Organization, 3/ which had to be implemented by the Convention on the Privileges and Immunities of the United Nations. 4/ In contrast, Article IX of the Fund's Articles is self-executing in that it provides that "the Fund shall possess full juridical personality" (Section 2) and sets forth the status and privileges and immunities that "shall be accorded to the Fund in the territories of each member" (Section 1); these rules become binding on each member and applicable within its territories upon membership, pursuant, if necessary, to the adoption of appropriate legislation or regulations.

The WTO would appear to meet the definition of a "specialized agency" within the meaning of Article 57 of the UN Charter. Article 57 of the Charter provides that "the various specialized agencies, established by intergovernmental agreement and having wide international responsibilities, as defined in their basic instruments, in economic . . . and related fields shall be brought into relationship with the United Nations in accordance with the provisions of Article 63." In turn, Article 63 provides that the Economic and Social Council may enter into agreements with any specialized agency, defining the terms on which the agency shall be brought into relationship with the United Nations; these agreements are subject to approval by the General Assembly. Once a specialized agency has been brought into relationship with the United Nations in accordance with Articles 57 and 63 of the UN Charter, it qualifies for the application of

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1/ Article III, paragraph 5. As noted above, collaboration of the WTO with the Fund and the Bank is discussed in other staff papers.

2/ Article VIII, paragraphs 1 and 2.

3/ Charter of the United Nations, signed on June 26, 1945, Articles 104 and 105, paragraph 1.

4/ Convention on the Privileges and Immunities of the United Nations, adopted by the U.N. General Assembly on February 13, 1946, Article 1.

the Convention on the Privileges and Immunities of the Specialized Agencies. 1/ Another feature of the specialized agencies is that, under Article 17, paragraph 3 of the UN Charter, the General Assembly of the United Nations examines their administrative budgets with a view to making recommendations to the agency concerned. 2/

It has not yet been decided whether the WTO will enter into a specialized agency agreement with the United Nations.

The WTO Agreement also authorizes the WTO to conclude a headquarters agreement. 3/ Negotiations for a headquarters agreement are under way.

## 2. Membership

The WTO Agreement stipulates the conditions for original membership of the organization and also provides for future accession to membership. 4/

Regarding original membership, contracting parties to the GATT 1947 as of the date of the entry into force of the WTO Agreement may become original members by accepting the WTO Agreement and the Multilateral Trade Agreements and by having made liberalization commitments under the agreements on trade in goods and in services that were accepted by the participants in the Uruguay Round and annexed to the respective agreements in "Schedules." 5/ It may be noted that contracting parties to the GATT 1947 (and, consequently, members of the WTO) need not be a sovereign state; GATT 1947 was open for signature for any government of a separate customs territory possessing "full autonomy in the conduct of its external commercial relations and of the other matters provided for in this Agreement." 6/

Before accepting the WTO Agreement, participants in the Uruguay Round that are not contracting parties to the GATT 1947 must first have concluded

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1/ For the text of the Convention, see, Selected Decisions, Nineteenth Issue (1994), pp. 526-44.

2/ It has been agreed with the United Nations that the Fund and the Bank are exempted from this provision as they do not rely for their annual budgets upon contributions from their members and, therefore, enjoy full budgetary autonomy (e.g., Fund Agreement with the United Nations, Article X, reproduced in Selected Decisions, Nineteenth Issue (1994), pp. 519-25). In contrast, the WTO will levy contributions from its members to meet its expenses (WTO Agreement, Article VII).

3/ Article VIII, paragraph 5.

4/ Articles XI and XII.

5/ Final Act, paragraph 4; WTO Agreement, Article XI, paragraph 1 and Article XIV, paragraph 1. Special provisions for the least developed countries apply, as they have until April 1995 to submit their commitments in goods and services.

6/ GATT 1947, Article XXVI, paragraph 5(c). Examples of such contracting parties are Hong Kong and Macau.

negotiations for their accession to GATT 1947 and become contracting parties thereto. 1/ The Preparatory Committee is considering issues surrounding the accession of countries whose accession to the GATT 1947 is underway but has not been completed.

The WTO Agreement will remain open for acceptance for a period of two years following the date that Ministers decide for its entry into force, unless the Ministers decide otherwise. 2/

Regarding subsequent accession to the WTO, any state (or separate customs territory possessing full autonomy over its external commercial relations and of the other matters provided for in the WTO Agreement and the Multilateral Trade Agreements) not eligible to be an original member may accede to the WTO "on terms to be agreed between it and the WTO," subject to approval by the Ministerial Conference by a two-thirds majority of the WTO membership. 3/

The WTO Agreement provides that the European Communities may also become an original member even though it was not a contracting party to the existing GATT (although it provided a mission to the GATT and spoke on trade matters for its member states). 4/ When the European Communities exercises the right to vote (as represented by the European Commission), it will have the number of votes equal to the number of its member states that are members of the WTO. 5/

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1/ Final Act, paragraph 5. Algeria and China were two Uruguay Round participants that are not contracting parties to the GATT.

2/ Article XIV, paragraph 1. An acceptance following the entry into force of the WTO Agreement will enter into force on the 30th day following the date of such acceptance (*Ibid.*), and the new member will be required to implement the obligations and concessions undertaken within the same time period as if it had joined the WTO when the WTO Agreement entered into force (Article XIV, paragraph 2).

3/ Final Act, paragraph 5; WTO Agreement, Article XII.

4/ Article XI, paragraph 1.

5/ Article IX, paragraph 1. Additional voting rules are discussed in 3.c. below.

Representatives of members are to be accorded by each member such privileges and immunities as are necessary for the independent exercise of their functions in connection with the WTO. 1/ Such privileges and immunities "shall be similar to" the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies. 2/

### 3. Structure and decision making

#### a. Institutional bodies

The WTO Agreement establishes two principal governing bodies, with specialized subsidiary bodies. 3/ The Ministerial Conference is the highest governing body, and is composed of representatives of all the members. 4/ It is required to meet at least once every two years. The Ministerial Conference is to carry out the functions of WTO and to take all actions necessary to that effect. It also has the authority to take decisions on all matters under the Multilateral Trade Agreements.

The General Council, also composed of representatives of all the members, is directed to "meet as appropriate" and, in the intervals between meetings of the Ministerial Conference, is charged with carrying out the functions of the Ministerial Conference. 5/

The General Council will discharge other functions assigned to it by the WTO Agreement, including convening as the Dispute Settlement Body and the Trade Policy Review Body, as appropriate. 6/ The General Council is also charged with making "appropriate arrangements" for "effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO," and "for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO." 7/

The WTO Agreement requires the establishment of specialized councils: a Council for Trade in Goods, a Council for Trade in Services, and a Council

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1/ Article VIII, paragraph 3.

2/ Article VIII, paragraph 4.

3/ Article IV.

4/ Article IV, paragraph 1.

5/ Article IV, paragraph 2. Although a number of other provisions in the WTO Agreement confirm that the General Council can perform specified functions also assigned to the Ministerial Conference (e.g., interpretation), other provisions assign functions specifically to the Ministerial Conference (e.g., waiver), potentially creating a question of the General Council's competence on such matters. It is the understanding of the staff (based on discussions with negotiators) that the general provision cited above is intended to prevail.

6/ Article IV, paragraphs 2 through 4.

7/ Article V.

for Trade-Related Aspects of Intellectual Property Rights, which will operate under the guidance of the General Council. These Councils are charged with carrying out functions assigned to them by their respective agreements and by the General Council. 1/

The Ministerial Conference has authority to create committees "as it may deem appropriate" and is required to formally establish the Committee on Trade and Development, the Committee on Balance-of-Payments Restrictions and the Committee on Budget, Finance and Administration, similar to committees that existed under GATT 1947, each with specific functions stipulated in the WTO Agreement or the Multilateral Trade Agreements. 2/ Participants have already decided on the establishment of an additional committee to consider the linkage of trade and environmental issues.

While the Ministerial Conference and General Council are composed of representatives of all WTO members, membership in both the Councils and the Committees "shall be open to representatives of all Members." 3/ Each Council may create subsidiary bodies, which may establish their own rules and procedures, subject to approval of their respective Councils. 4/

b. Secretariat

A Secretariat of the WTO will be established, headed by a Director-General appointed by the Ministerial Conference and whose powers, duties and term of office will be stipulated in regulations to be adopted by the Ministerial Conference. 5/

In line with the international functions of the WTO, and codifying the practice under the GATT, the WTO Agreement states that the responsibilities of the Director-General and the staff shall be "exclusively international in character" and they shall not seek or accept instructions from any government or other external authority. 6/ Additionally, members undertake to "respect the international character of the responsibilities of the Director-General and of the staff of the Secretariat and shall not seek to influence them in the discharge of their duties." 7/

As with privileges and immunities of representatives, members are to accord officials of the WTO (the Director-General and the staff of the

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1/ Article IV, paragraph 5.

2/ Article IV, paragraph 7.

3/ Article IV, paragraphs 5 and 7.

4/ Article IV, paragraph 6. Following established practice under GATT 1947, any decision on a matter before a Committee or Council that would alter rights and obligations of members (or impose new ones) would be referred to the General Council.

5/ Article VI.

6/ Article VI, paragraph 4.

7/ Ibid.

Secretariat) such privileges and immunities as are necessary for the independent exercise of their functions in connection with the WTO. 1/ As in the case of representatives, the privileges and immunities of officials of the WTO "shall be similar to" the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, 2/ which contains different provisions for officials of the organization and representatives of members.

c. Voting

As in the case of GATT 1947, decision making in WTO would generally be by "consensus," although matters at issue can be decided by voting where a decision cannot be reached by consensus. Voting in the Ministerial Conference and General Council would be conducted on the basis of one vote per member, with no provision for weighted voting. 3/ Decisions of the Ministerial Conference and the General Council are generally to be taken by a majority of the votes cast, unless otherwise specified in the WTO Agreement or one of the Multilateral Trade Agreements. 4/

Special majorities are required for amendments, waivers and interpretations:

(i) Amendments. Amendments for specified parts of the WTO Agreement and the Multilateral Trade Agreements require unanimity. Other provisions may be amended by a two-thirds majority, but an amendment that is adopted by such a majority and would "alter the rights and obligations" of members does not bind a member that refuses to accept it. In such a case, however, the Ministerial Conference can by a three-fourths vote require all members to accept the amendment, withdraw from the Agreement, or remain a non-consenting member with the explicit approval of the Ministerial Conference. 5/

(ii) Waivers. The WTO Agreement makes the rules on waivers more stringent than under GATT 1947, by requiring specified procedures before the waiver may be approved by a three-fourths majority of the members, and a statement on the "exceptional circumstances" that warrant the waiver. 6/

(iii) Interpretations. The Ministerial Conference and the General Council have exclusive authority to adopt interpretation of the WTO

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1/ Article VIII, paragraph 3.

2/ Article VIII, paragraph 4.

3/ Article IX, paragraph 1.

4/ Ibid.

5/ See generally, Article X.

6/ Article IX, paragraphs 3 and 4. These rules address the concern under GATT 1947 that the requirements for amendments could be circumvented through the waiver procedures.

Agreement and the Annex 1 (based on a recommendation of the Council overseeing the particular agreement). 1/ The rules on interpretation, requiring a three-fourths majority, also explicitly provide that interpretations are not to be used to undermine the amendment procedures. 2/

#### 4. Funding

The WTO will be financed by periodic contributions of its members. The General Council is to adopt financial regulations, which are to be based, as far as practicable, on the regulations and practices under GATT 1947, and on an annual budget estimate, by a two-thirds majority comprising more than half of the members of the WTO. 3/ The Director-General shall present the annual budget estimate and financial statement to the Committee on Budget, Finance and Administration (Budget Committee) for its review and to make recommendations thereon to the General Council.

The WTO Agreement provides that each member "shall promptly contribute to the WTO its share in the expenses of the WTO in accordance with the financial regulations adopted by the General Council." 4/ The application of sanctions for arrears is apparently contemplated by the WTO Agreement, which requires the proposal for the financial regulations to set out the measures to be taken in respect of members in arrears; 5/ it would thus appear to be for the General Council to decide the nature and scope of any sanctions.

### III. Dispute Settlement

The WTO Agreement establishes a comprehensive set of procedures for resolving multilateral trade disputes and regulating compensatory measures, building on the procedures under GATT 1947. 6/ The "Understanding on Rules and Procedures Governing the Settlement of Disputes" (Dispute Settlement Understanding) provides for a unified dispute settlement

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1/ Article IX, paragraph 2. Interpretations of the Plurilateral Trade Agreements are governed by their own terms.

2/ Ibid.

3/ Article VII, paragraphs 2 and 3. The Budget Committee is charged with proposing to the General Council financial regulations, including an apportionment of expenses of the WTO among its members (Ibid.).

4/ Article VII, paragraph 4.

5/ Article VII, paragraph 2(b).

6/ Article III, paragraphs 1 and 3. Kohona, "Dispute Resolution under the World Trade Organization--An Overview," Journal of World Trade (Vol. 28, 1994), p. 23, (discussing a draft of the procedures before they were finalized); Lowenfeld, op. cit., p. 477.

mechanism. 1/ It would thus replace a fragmented system where, in addition to GATT panels with general jurisdiction, specialized dispute resolution bodies existed for some disputes under certain 1979 Tokyo Round agreements, 2/ and rules were contained in several different GATT 1947 documents. 3/ The Dispute Settlement Understanding thus consolidates, codifies and refines the GATT dispute settlement mechanism. It retains the central feature of the GATT 1947 mechanism, which is that only an aggrieved member can initiate a procedure. The WTO will not have the power, therefore, to enforce the rules set forth in the Multilateral Trade Agreements. As stated in the WTO Agreement, the WTO facilitates the administration of those rules; it does not administer them. 4/

The most significant modification involves the voting rules on the formation of panels and the adoption of panel reports, and the application of these rules to the new appellate procedure. This Section provides an overview of the Dispute Settlement Understanding.

#### A. Scope

The Dispute Settlement Understanding applies to disputes under the covered agreements, which comprise the WTO Agreement and its Annexes (but not including the TPRM), and to disputes relating to the application of the Dispute Settlement Understanding itself, taken in isolation or in

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1/ WTO Agreement, Annex 2. The Dispute Settlement Understanding is hereinafter cited as Annex 3. While termed an "understanding," the Dispute Settlement Understanding is made legally binding by the WTO Agreement, which states that the agreements and associated legal instruments included in Annexes 1, 2, and 3 "are integral parts of this Agreement, binding on all Members" (WTO Agreement, Article II, paragraph 2).

2/ See, e.g., Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade (hereinafter referred to as the Subsidies Code), Part VI (1979).

3/ See, e.g., Decision on Improvements to GATT Dispute Settlement Rules and Procedures of 12 April 1989, *BISD*, 36S/61 (1989); Ministerial Declaration, *BISD*, 29S/9, pp. 13-16 (1982); Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, *BISD*, 26S/210 (1979); Conciliation -- Procedures Under Article XXIII (Procedures for the Settlement of Disputes Between Developed and Less-Developed Countries), *BISD*, 14S/18 (1966).

4/ See I.A.2. above. The Dispute Settlement Understanding also provides for surveillance of implementation of recommendations and rulings.

combination with any other covered agreement. 1/ To the extent that there are special or additional provisions on dispute settlement in the covered agreements, these provisions prevail over conflicting provisions of the Dispute Settlement Understanding. 2/

Under GATT 1947 rules on "nullification or impairment," a contracting party could invoke the dispute resolution procedures if it considered that any benefit accruing to it was being "nullified or impaired," or the attainment of any objective of the GATT was being impeded as a result of (a) the failure of another contracting party to carry out its obligations (alleged violations), (b) the application by another contracting party of any measures, whether or not it conflicted with the GATT (non-violation nullification or impairment), or (c) the existence of any other situation. 3/

The Dispute Settlement Understanding continues this categorization of disputes. The procedures to be applied under the Dispute Settlement Understanding to the first two categories are largely the same. Two differences may be noted. First, in cases of an alleged violation of a covered agreement, there is "normally a presumption that a breach of the rules has an adverse impact on other Members parties to that agreement." 4/ In "non-violation" cases, in contrast, "the complaining party shall present a detailed justification in support of any

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1/ Annex 2, Article 1, paragraph 1 and Appendix 1. With respect to disputes for which requests for consultations were made under GATT 1947 (or any other predecessor agreement to the covered agreements), or disputes on which panel reports have not been adopted or fully implemented, the relevant dispute settlement rules and procedures in effect immediately prior to the date of entry into force of the WTO Agreement will continue to apply (Annex 2, Article 3, paragraph 11).

2/ Annex 2, Article 1, paragraph 2; Article 2, paragraph 2 and Appendix 2.

3/ GATT 1947, Article XXIII, paragraph 1. The situation in (c) has not often been invoked, but was noted by the Working Party on Quantitative restrictions during the Review Session of 1954-55 as a provision that could be invoked if, for example, "any contracting party considered that the pressure on its international reserves was resulting from the situation in some individual country. . . ." It was also noted in the February 1953 report on the Accession of Japan that the provision might also be invoked in the case of "violent disruption of trading conditions. . . if remedial action consistent with the [GATT] would lead to a general raising of tariff levels and other barriers to world trade." (General Agreement on Tariffs and Trade, Analytical Index, Sixth Edition, pp. 621-24 (1993)).

4/ Annex 2, Article 3, paragraph 8. It is thus "up to the member against whom the complaint has been brought to rebut the charge" (Ibid.).

complaint." 1/ Additionally, in the latter case, there is no obligation to withdraw the measure. 2/

As to disputes related to "the existence of any other situation," the provisions of the Dispute Settlement Understanding apply up to and including the point in the proceedings where the panel report is circulated to members, but different procedures apply with regard to consideration for adoption of panel reports and surveillance and implementation of recommendations and rulings. 3/

Through the resolution of these disputes, the dispute settlement mechanism is designed to provide "security and predictability to the multilateral trading system." 4/ Consequently, the application of the Dispute Settlement Understanding could strengthen the multilateral system of dispute resolution, foster the rule of law and thereby discourage resort to unilateral measures. In this regard, the Dispute Settlement Understanding states:

"When Members seek the redress of a violation of obligations or other nullification or impairment of benefits under the covered agreements or an impediment to the attainment of any objective of the covered agreements, they shall have recourse to, and abide by, the rules and procedures of this Understanding." 5/

Additional provisions in the Dispute Settlement Understanding require each member not to make specified determinations (relating to its rights under the covered agreements) "except through recourse to dispute settlement in accordance with the rules and procedures" of the Dispute Settlement Understanding, and to "make any such determination consistent with the findings contained in the panel or Appellate Body report adopted by the DSB or an arbitration award rendered under" the Dispute Settlement Understanding. 6/

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1/ Annex 2, Article 26, paragraph 1(a).

2/ *Ibid.*, paragraph 1(b).

3/ Annex 2, Article 26, paragraph 2 (referring to procedures adopted during the mid-term ministerial meeting of the Uruguay Round (BISD, 36S/61-67 (1989))).

4/ Annex 2, Article 3, paragraph 2.

5/ Annex 2, Article 23, paragraph 1. See also Lowenfeld, *op. cit.*, p. 481.

6/ Annex 2, Article 23, paragraph 2(a). Members must also comply with the time period for the member concerned to implement the recommendations and rulings and with the procedures regarding authorization for and level of any countermeasures (paragraphs 2(b) and (c)).

## B. Role of the Dispute Settlement Body

The Dispute Settlement Understanding establishes the Dispute Settlement Body (DSB) to administer the dispute settlement rules of the Dispute Settlement Understanding and the covered agreements (except as otherwise provided in a covered agreement). The DSB will have authority, *inter alia*, to establish panels, adopt panel and appellate reports, maintain surveillance over the implementation of rulings and recommendations, and authorize suspension of concessions under the covered agreements. 1/

The authority of the DSB is delineated in two notable ways. First, members recognize that the dispute settlement system of the WTO serves to preserve the rights and obligations of members under the covered agreements and to clarify the existing provisions of those agreements in accordance with customary rules of interpretation of public international law; recommendations and rulings of the DSB cannot add to or diminish the rights and obligations provided in the covered agreements. 2/

Second, the effect of a ruling is limited to the disputants and the particular dispute, as under GATT 1947. Moreover, interpretations of applicable provisions that are articulated in panel reports, and the recommendations and rulings of the DSB, are not binding in subsequent cases. For an "authoritative interpretation" of a matter under one of the covered agreements, a member may refer the matter to the Ministerial Conference or the General Council, 3/ which have exclusive authority to adopt authoritative interpretations of the covered multilateral agreements by a three-fourths majority vote of the members. 4/ Nonetheless, panels under the Dispute Settlement Understanding are likely to continue the practice by GATT 1947 panels of referring to previous reports for guidance. 5/

## C. Procedures for resolution of disputes

The Dispute Settlement Understanding adopts and builds on numerous procedures developed under GATT 1947 and agreed to at the mid-term review of the Uruguay Round, including rules regarding consultation and conciliation, the establishment of panels, adoption of panel reports, appellate review,

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1/ The membership of the DSB is to be the same as that of the General Council, but it will have a separate chairman, a separate staff, separate rules of procedure and a separate document series (Lowenfeld, *op. cit.*, p. 481). Under GATT 1947, documents were published chronologically in Basic Instruments and Selected Documents of the GATT.

2/ Annex 2, Article 3, paragraph 2 and Article 19, paragraph 2.

3/ Annex 2, Article 3, paragraph 9.

4/ WTO Agreement, Article IX, paragraph 2.

5/ Carreau, Flory and Juillard, Droit International Économique, (3rd ed., 1990), pp. 103-104.

and compensatory measures. The Understanding also provides for prescribed time periods for all stages of the process. 1/

### 1. Consultations

The Dispute Settlement Understanding refers to requirements in the covered agreements for consultations with a view towards reaching a mutually satisfactory solution prior to invoking dispute settlement procedures. 2/ Under the Dispute Settlement Understanding, members "affirm their resolve to strengthen and improve the effectiveness of the consultation procedures employed by Members." 3/ The Dispute Settlement Understanding authorizes the Director-General, acting in an ex officio capacity, to offer good offices, conciliation or mediation with a view to assisting members to settle a dispute and further details certain procedures to be followed in such circumstances. 4/

### 2. Formation of panels

If the parties to a dispute fail to resolve the dispute through consultations by the expiration of a specified period, or if the disputing parties mutually agree before the period expires, the complaining party may request the establishment of a panel. 5/ Under the GATT 1947 consensus rule, any contracting party, even a disputant, could block formation of the panel to consider a dispute. In contrast, the Dispute Settlement Understanding essentially reverses the consensus rule by providing that "[i]f the complaining party so requests, a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel." 6/ Thus, if a complaining party does not withdraw its request for a panel, the Dispute Settlement Understanding guarantees a member the right to panel review of a complaint. 7/

The function of panels is described as follows:

"The function of panels is to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements.

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1/ The Dispute Settlement Understanding also contains rules, beyond the scope of this paper, on multiple complainants, third party participation, right to seek information, confidentiality, ex parte contacts, and special procedures involving least developed countries.

2/ See generally, Annex 2, Article 4, and paragraph 5 in particular.

3/ Article 4, paragraph 1.

4/ See generally, Annex 2, Article 5.

5/ Annex 2, Article 4, paragraph 7.

6/ Annex 2, Article 6, paragraph 1.

7/ There is a general injunction, however, that "[b]efore bringing a case, a Member shall exercise its judgement as to whether action under these procedures would be fruitful" (Annex 2, Article 3, paragraph 7).

Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. Panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution." 1/

The Dispute Settlement Understanding requires a panel (or the Appellate Body, discussed below), when it concludes that a measure is inconsistent with a covered agreement, to recommend that the member imposing the measure bring it into conformity with the relevant agreement. The panel (or Appellate Body) may suggest ways in which the member concerned could implement the recommendations. 2/

Panels will be composed of three panelists, unless the parties to the dispute agree, within 10 days from the establishment of the panel, to a panel composed of five panelists. 3/ Panelists shall be selected on an ad hoc basis from a roster of "well qualified persons," 4/ who may be "governmental and/or non-governmental individuals." 5/ The Dispute Settlement Understanding provides detailed rules to facilitate the selection of panelists and assure their independence and to govern the procedures employed by panels in their consideration of the dispute. 6/

### 3. Adoption of a panel report

Under the Dispute Settlement Understanding, adoption of a panel report is subject to the same voting rule as the formation of a panel. Within a specified period after a panel report is circulated to members, "the report shall be adopted at a DSB meeting unless. . .the DSB decides by consensus not to adopt the report," or if a party to the dispute formally notifies the DSB of its decision to appeal it. 7/ Since the members of the DSB cannot unanimously reject a panel report if a party to the dispute favors its adoption, the new voting rule eliminates the ability of a disputant under the GATT 1947 dispute settlement procedures to block the report from

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1/ Annex 2, Article 11. The Dispute Settlement Understanding also provides for their terms of reference (Annex 2, Article 7). The Dispute Settlement Understanding contemplates that, as was the case under GATT 1947, the Secretariat will assist panels with secretarial and technical support, and "especially on the legal, historical and procedural aspects of the matters dealt with" (Annex 2, Article 27, paragraph 1).

2/ Annex 2, Article 19, paragraph 1.

3/ Annex 2, Article 8, paragraph 5.

4/ *Ibid.*, paragraph 4.

5/ *Ibid.*, paragraph 1.

6/ See generally Annex 2, Articles 8, 12, 13, 14 and 15.

7/ Annex 2, Article 16, paragraph 4.

adoption. 1/ If the report is appealed, however, it will not be considered for adoption by the DSB until after the appeal is completed.

#### 4. Appellate review

The Dispute Settlement Understanding's provision of appellate review is a feature that was absent in dispute resolution under GATT 1947. 2/ The Dispute Settlement Understanding requires the DSB to establish a standing Appellate Body, "broadly representative of the WTO Membership," to be composed of seven persons, three of whom shall serve on any one case. 3/ An Appellate Body member will be appointed for a four-year term and may be reappointed for another four-year term. 4/

Persons appointed to the Appellate Body must not be affiliated with any government (in contrast to panelists, who may be government officials), and are required to be "persons of recognized authority, with demonstrated expertise in law, international trade and the subject matter of the covered agreements generally." 5/

Appellate review under the Dispute Settlement Understanding is limited to issues of law covered in the panel report and legal interpretations developed by the panel. 6/ An Appellate Body report "shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt" it within the specified period. 7/

#### 5. Remedies

The Dispute Settlement Understanding provisions on remedies flow from the general admonition that "[p]rompt compliance with recommendations or

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1/ As noted above, the General Council performs the functions of the DSB and thus must apply the "reverse consensus" rule when meeting on the question of adoption of a panel report (WTO Agreement, Article IX, paragraph 1, n. 3.) However, when the General Council votes on the adoption of an authoritative interpretation of one of the covered agreements, the rules on decision making under the WTO Agreement that require only three-fourths majority of the members apply (WTO Agreement, Article IX, paragraph 2).

2/ Annex 2, Article 17.

3/ Ibid., paragraphs 1 and 2.

4/ Ibid., paragraph 2. However, the terms of three of the seven persons appointed immediately after the entry into force of the WTO Agreement shall expire after two years.

5/ Ibid., paragraph 3. The Appellate Body is charged with drawing up its own working procedures in consultation with the Chairman of the DSB and the Director General (Ibid., paragraph 9).

6/ Ibid., paragraph 6.

7/ Ibid., paragraph 14.

rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefit of all Members." 1/ Further consultations between the disputants is provided for if the member concerned fails to bring the measure found to be inconsistent with a covered agreement into compliance therewith or otherwise fails to comply with the DSB's recommendations and rulings. 2/

If no mutually agreed compensation has been agreed to, any party having invoked the dispute settlement procedures may request authorization to suspend the application to the member concerned concessions or other obligations under the covered agreements 3/ (hereinafter referred to as "countermeasures"). 4/ As the WTO will administer several agreements in addition to the GATT 1994, the term "cross-retaliation" has been used to refer to the potential application of countermeasures under a covered agreement other than the agreement relating to the objectionable measure.

When countermeasures are appropriate, the Dispute Settlement Understanding requires the complaining party to apply certain principles in considering the countermeasures for which it will request authorization. The Dispute Settlement Understanding states that "the general principle" is that the complaining party should first seek countermeasures with respect to the same sector(s) as that involving the objectionable measure. Only if compensation is not practicable or effective with respect to the same sector, it may seek countermeasures in other sectors under the same agreement; and only if compensation is not practicable or effective with respect to the same agreement, may a member "cross-retaliate" by seeking countermeasures under another agreement. 5/ The new rules define

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1/ Annex 2, Article 21, paragraph 1.

2/ Annex 2, Article 22, paragraph 2. The DSB is also charged with surveillance of adopted recommendations and rulings (Annex 2, Article 21, paragraph 6 and Article 22, paragraph 8).

3/ Annex 2, Article 22, paragraph 2.

4/ Compensation may be granted by the member imposing the offending measure, but compensation "is voluntary and, if granted, shall be consistent with the covered agreements" (Annex 2, Article 22, paragraph 1).

5/ Ibid., paragraphs 3(a) through (c). In applying these principles, the party is directed to take into account (a) the trade in the sector or under the agreement relating to the objectionable measure and the importance of such trade to that party, and (b) "the broader economic elements related to the nullification or impairment and the broader economic consequences of the suspension of concessions or other obligations" (Ibid., paragraph 3(d)).

"agreement" to include all those involving trade in goods "taken as a whole." 1/

The DSB must grant the requested authorization (within a specified period) unless the members decide by consensus to reject the request. 2/ If the member affected by the countermeasures objects to authorized countermeasures, the matter may be referred to arbitration in accordance with the Dispute Settlement Understanding's rules. 3/ Recourse to arbitration suspends the authority to apply countermeasures. Arbitration is to be carried out by the members of the panel that adjudicated the dispute, if they are available, or by an arbitrator (which may be an individual or a group) appointed by the Director-General. 4/ The parties to the arbitration proceeding must agree to abide by the arbitration award. 5/

Countermeasures must be limited to the level of nullification or impairment, 6/ temporary, and eliminated when the violative measure is removed or other mutually satisfactory resolution is reached. 7/

#### IV. Trade Policy Review Mechanism

The WTO is also charged with administering the Trade Policy Review Mechanism (TPRM). The function of the TPRM is "to examine the impact of a Member's trade policies and practices on the multilateral trading system," 8/ but it is not "intended to serve as a basis for the enforcement of specific obligations under the Agreements or for dispute settlement procedures, or to impose new policy commitments on Members." 9/ The TPRM was established on a provisional basis at the mid-term meeting of

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1/ Ibid., paragraph 3(g). Consequently, restrictions on payments or transfers for international current transactions, now covered by the GATS, could not be imposed against a member that violated one of the agreements on trade in goods, or the Agreement on TRIPS unless potential countermeasures under these latter agreements were considered impractical or ineffective. See "The Relationship of The World Trade Organization with the Fund--Legal Aspects," op. cit., Section II.B.2.d.

2/ Annex 2, Article 22, paragraph 6.

3/ Ibid.

4/ Ibid., n. 15.

5/ Annex 2, Article 25, paragraph 3.

6/ Annex 2, Article 22, paragraph 4

7/ Ibid., paragraph 8.

8/ Trade Policy Review Mechanism, Annex 3, Paragraph A, section (ii). TPRM is cited hereinafter as Annex 3.

9/ Annex 3, Paragraph A, section (i). Under the TPRM, members agree to encourage and promote greater transparency within their systems, yet acknowledge "that the implementation of domestic transparency must be on a voluntary basis and take account of each Member's legal and political systems" (Annex 3, Paragraph B).

the Uruguay Round, concluded in April 1989. The Final Act makes the TPRM permanent, creates the Trade Policy Review Body (TPRB) and, at the same time, enlarges the scope of its surveillance to include services and intellectual property. 1/

The frequency of reviews for each member depends primarily on its impact on the functioning of the multilateral trading system, defined in terms of their share of world trade in a recent representative period. According to this criterion, the "first four trading entities (including the European Communities as one)" are subject to review every two years; the next sixteen, every four years, and the remaining countries, every six years. 2/

The TPRB is charged with establishing a basic plan for the conduct of the reviews, and a program of reviews for each year in consultations with the members directly concerned. 3/ The TPRB is directed to base its work on a "full report" supplied by the member or members under review and a report to be drawn up by the Secretariat on its own responsibility, based on the information available to it and that provided by the member(s) concerned. 4/ "Full reports" must describe the trade policies and practices pursued by the member or members concerned. The TPRB is to decide on a format for these reports, which it may revise in light of experience. 5/ Members are also required to provide brief reports between reviews when there are significant changes in their trade policies. Additionally, "an annual update of statistical information will be provided according to the agreed format." 6/

The full reports and the reports prepared by the Secretariat, together with the minutes of the related meeting of the TPRM, are to be published "promptly" after the review, and are to be forwarded to the Ministerial Conference, which shall take note of them. 7/

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1/ Surveillance issues are also discussed in SM/94/192 (7/19/94) and SM/94/56 (3/1/94).

2/ A longer period may be fixed for least-developed country members, and exceptionally, a shorter period for a member whose trade policies or practices change in a way "that may have a significant impact on its trading partners. . . ." (Annex 3, Paragraph C, Section (ii)). The TPRM also calls for harmonizing the normal rhythm of the trade policy reviews with the timetable for balance-of-payments consultations, provided that the trade policy review is not postponed by more than 12 months (Annex 3, Paragraph E).

3/ Annex 3, paragraph C, section (iv).

4/ *Ibid.*, section (v).

5/ Annex 3, paragraph D. Initially, the format must be based on the Outline Format for Country Reports established by the Decision of 19 July 1989, *BISD*, 36S/406-409.

6/ Annex 3, paragraph D.

7/ Annex 3, paragraph C, sections (vi) and (vii).

The TPRB is also assigned two additional responsibilities: First, it is directed to undertake an appraisal of the operation of the TPRM (to be presented to the Ministerial Conference) not more than five years after the WTO comes into effect, and subsequent appraisals at intervals to be determined by it or as requested by the Ministerial Conference. 1/ Second, it must undertake an "annual overview of developments in the international trading environment which are having an impact on the multilateral trading system." 2/

### Conclusion

The creation of the WTO as a new international institution with legal personality and other attributes of an international organization will replace the de facto nature of the administration of GATT 1947. The institutional provisions of the WTO Agreement provide a clearly delineated structure for the WTO with specified functions for its various bodies and specified voting majorities for various forms of decision making.

While less ambitious than the ITO envisaged when the Bretton Woods institutions were established, the WTO will oversee a broad range of international commercial matters--trade in goods (including GATT 1994) and in services, and trade-related aspects of intellectual property rights.

Also charged with administering the new rules on dispute settlement, the WTO will promote the orderly resolution of disputes in the above matters. The dispute settlement rules unify and codify many practices under GATT 1947, but also include new features such as voting rules that virtually assure review by a panel and adoption of a panel report, facilitate compliance with panel rulings, and introduce the opportunity for appellate review of these reports. This new dispute settlement system will permit the WTO to foster the rule of law in solving international commercial disputes within its domain and reduce resort to unilateral countermeasures.

The WTO will also administer the trade policy review mechanism, thereby making the experiment in trade surveillance an established feature of the new institution.

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1/ Annex 3, paragraph F.

2/ Annex 3, paragraph G.

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

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

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

**AGREEMENT ESTABLISHING THE  
WORLD TRADE ORGANIZATION**

The *Parties* to this Agreement,

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

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

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

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

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

*Agree* as follows:

*Article I*

*Establishment of the Organization*

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

*Article II*

*Scope of the WTO*

1. The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement.
2. The agreements and associated legal instruments included in Annexes 1, 2 and 3 (hereinafter referred to as "Multilateral Trade Agreements") are integral parts of this Agreement, binding on all Members.
3. The agreements and associated legal instruments included in Annex 4 (hereinafter referred to as "Plurilateral Trade Agreements") are also part of this Agreement for those Members that have

accepted them, and are binding on those Members. The Plurilateral Trade Agreements do not create either obligations or rights for Members that have not accepted them.

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

### *Article III*

#### *Functions of the WTO*

1. The WTO shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.
2. The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.
3. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the "Dispute Settlement Understanding" or "DSU") in Annex 2 to this Agreement.
4. The WTO shall administer the Trade Policy Review Mechanism (hereinafter referred to as the "TPRM") provided for in Annex 3 to this Agreement.
5. With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.

### *Article IV*

#### *Structure of the WTO*

1. There shall be a Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years. The Ministerial Conference shall carry out the functions of the WTO and take actions necessary to this effect. The Ministerial Conference shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Member, in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement.
2. There shall be a General Council composed of representatives of all the Members, which shall meet as appropriate. In the intervals between meetings of the Ministerial Conference, its functions shall be conducted by the General Council. The General Council shall also carry out the functions assigned to it by this Agreement. The General Council shall establish its rules of procedure and approve the rules of procedure for the Committees provided for in paragraph 7.

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

4. The General Council shall convene as appropriate to discharge the responsibilities of the Trade Policy Review Body provided for in the TPRM. The Trade Policy Review Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities.

5. There shall be a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Council for TRIPS"), which shall operate under the general guidance of the General Council. The Council for Trade in Goods shall oversee the functioning of the Multilateral Trade Agreements in Annex 1A. The Council for Trade in Services shall oversee the functioning of the General Agreement on Trade in Services (hereinafter referred to as "GATS"). The Council for TRIPS shall oversee the functioning of the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Agreement on TRIPS"). These Councils shall carry out the functions assigned to them by their respective agreements and by the General Council. They shall establish their respective rules of procedure subject to the approval of the General Council. Membership in these Councils shall be open to representatives of all Members. These Councils shall meet as necessary to carry out their functions.

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

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

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

#### *Article V*

##### *Relations with Other Organizations*

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

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

*Article VI*

*The Secretariat*

1. There shall be a Secretariat of the WTO (hereinafter referred to as "the Secretariat") headed by a Director-General.
2. The Ministerial Conference shall appoint the Director-General and adopt regulations setting out the powers, duties, conditions of service and term of office of the Director-General.
3. The Director-General shall appoint the members of the staff of the Secretariat and determine their duties and conditions of service in accordance with regulations adopted by the Ministerial Conference.
4. The responsibilities of the Director-General and of the staff of the Secretariat shall be exclusively international in character. In the discharge of their duties, the Director-General and the staff of the Secretariat shall not seek or accept instructions from any government or any other authority external to the WTO. They shall refrain from any action which might adversely reflect on their position as international officials. The Members of the WTO shall respect the international character of the responsibilities of the Director-General and of the staff of the Secretariat and shall not seek to influence them in the discharge of their duties.

*Article VII*

*Budget and Contributions*

1. The Director-General shall present to the Committee on Budget, Finance and Administration the annual budget estimate and financial statement of the WTO. The Committee on Budget, Finance and Administration shall review the annual budget estimate and the financial statement presented by the Director-General and make recommendations thereon to the General Council. The annual budget estimate shall be subject to approval by the General Council.
2. The Committee on Budget, Finance and Administration shall propose to the General Council financial regulations which shall include provisions setting out:
  - (a) the scale of contributions apportioning the expenses of the WTO among its Members; and
  - (b) the measures to be taken in respect of Members in arrears.

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

3. The General Council shall adopt the financial regulations and the annual budget estimate by a two-thirds majority comprising more than half of the Members of the WTO.
4. Each Member shall promptly contribute to the WTO its share in the expenses of the WTO in accordance with the financial regulations adopted by the General Council.

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## Article VIII

### Status of the WTO

1. The WTO shall have legal personality, and shall be accorded by each of its Members such legal capacity as may be necessary for the exercise of its functions.
2. The WTO shall be accorded by each of its Members such privileges and immunities as are necessary for the exercise of its functions.
3. The officials of the WTO and the representatives of the Members shall similarly be accorded by each of its Members such privileges and immunities as are necessary for the independent exercise of their functions in connection with the WTO.
4. The privileges and immunities to be accorded by a Member to the WTO, its officials, and the representatives of its Members shall be similar to the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947.
5. The WTO may conclude a headquarters agreement.

## Article IX

### Decision-Making

1. The WTO shall continue the practice of decision-making by consensus followed under GATT 1947.<sup>1</sup> Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. At meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote. Where the European Communities exercise their right to vote, they shall have a number of votes equal to the number of their member States<sup>2</sup> which are Members of the WTO. Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, unless otherwise provided in this Agreement or in the relevant Multilateral Trade Agreement.<sup>3</sup>
2. The Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements. In the case of an interpretation of a Multilateral Trade Agreement in Annex 1, they shall exercise their authority on the basis of a recommendation by the Council overseeing the functioning of that Agreement. The decision to adopt an interpretation shall be taken by a three-fourths majority of the Members. This paragraph shall not be used in a manner that would undermine the amendment provisions in Article X.
3. In exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements, provided that

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

<sup>2</sup>The number of votes of the European Communities and their member States shall in no case exceed the number of the member States of the European Communities.

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

any such decision shall be taken by three fourths<sup>4</sup> of the Members unless otherwise provided for in this paragraph.

- (a) A request for a waiver concerning this Agreement shall be submitted to the Ministerial Conference for consideration pursuant to the practice of decision-making by consensus. The Ministerial Conference shall establish a time-period, which shall not exceed 90 days, to consider the request. If consensus is not reached during the time-period, any decision to grant a waiver shall be taken by three fourths<sup>4</sup> of the Members.
- (b) A request for a waiver concerning the Multilateral Trade Agreements in Annexes 1A or 1B or 1C and their annexes shall be submitted initially to the Council for Trade in Goods, the Council for Trade in Services or the Council for TRIPS, respectively, for consideration during a time-period which shall not exceed 90 days. At the end of the time-period, the relevant Council shall submit a report to the Ministerial Conference.

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

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

#### *Article X*

##### *Amendments*

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

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

2. Amendments to the provisions of this Article and to the provisions of the following Articles shall take effect only upon acceptance by all Members:  
  
Article IX of this Agreement;  
Articles I and II of GATT 1994;  
Article II:1 of GATS;  
Article 4 of the Agreement on TRIPS.
3. Amendments to provisions of this Agreement, or of the Multilateral Trade Agreements in Annexes IA and IC, other than those listed in paragraphs 2 and 6, of a nature that would alter the rights and obligations of the Members, shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each other Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under this paragraph is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference.
4. Amendments to provisions of this Agreement or of the Multilateral Trade Agreements in Annexes IA and IC, other than those listed in paragraphs 2 and 6, of a nature that would not alter the rights and obligations of the Members, shall take effect for all Members upon acceptance by two thirds of the Members.
5. Except as provided in paragraph 2 above, amendments to Parts I, II and III of GATS and the respective annexes shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under the preceding provision is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference. Amendments to Parts IV, V and VI of GATS and the respective annexes shall take effect for all Members upon acceptance by two thirds of the Members.
6. Notwithstanding the other provisions of this Article, amendments to the Agreement on TRIPS meeting the requirements of paragraph 2 of Article 71 thereof may be adopted by the Ministerial Conference without further formal acceptance process.
7. Any Member accepting an amendment to this Agreement or to a Multilateral Trade Agreement in Annex 1 shall deposit an instrument of acceptance with the Director-General of the WTO within the period of acceptance specified by the Ministerial Conference.
8. Any Member of the WTO may initiate a proposal to amend the provisions of the Multilateral Trade Agreements in Annexes 2 and 3 by submitting such proposal to the Ministerial Conference. The decision to approve amendments to the Multilateral Trade Agreement in Annex 2 shall be made by consensus and these amendments shall take effect for all Members upon approval by the Ministerial Conference. Decisions to approve amendments to the Multilateral Trade Agreement in Annex 3 shall take effect for all Members upon approval by the Ministerial Conference.
9. The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide exclusively by consensus to add that agreement to Annex 4. The Ministerial Conference, upon the request of the Members parties to a Plurilateral Trade Agreement, may decide to delete that Agreement from Annex 4.

10. Amendments to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

*Article XI*

*Original Membership*

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

*Article XII*

*Accession*

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

*Article XIII*

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

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

4. The Ministerial Conference may review the operation of this Article in particular cases at the request of any Member and make appropriate recommendations.

5. Non-application of a Plurilateral Trade Agreement between parties to that Agreement shall be governed by the provisions of that Agreement.

#### *Article XIV*

##### *Acceptance, Entry into Force and Deposit*

1. This Agreement shall be open for acceptance, by signature or otherwise, by contracting parties to GATT 1947, and the European Communities, which are eligible to become original Members of the WTO in accordance with Article XI of this Agreement. Such acceptance shall apply to this Agreement and the Multilateral Trade Agreements annexed hereto. This Agreement and the Multilateral Trade Agreements annexed hereto shall enter into force on the date determined by Ministers in accordance with paragraph 3 of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations and shall remain open for acceptance for a period of two years following that date unless the Ministers decide otherwise. An acceptance following the entry into force of this Agreement shall enter into force on the 30th day following the date of such acceptance.

2. A Member which accepts this Agreement after its entry into force shall implement those concessions and obligations in the Multilateral Trade Agreements that are to be implemented over a period of time starting with the entry into force of this Agreement as if it had accepted this Agreement on the date of its entry into force.

3. Until the entry into force of this Agreement, the text of this Agreement and the Multilateral Trade Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. The Director-General shall promptly furnish a certified true copy of this Agreement and the Multilateral Trade Agreements, and a notification of each acceptance thereof, to each government and the European Communities having accepted this Agreement. This Agreement and the Multilateral Trade Agreements, and any amendments thereto, shall, upon the entry into force of this Agreement, be deposited with the Director-General of the WTO.

4. The acceptance and entry into force of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement. Such Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. Upon the entry into force of this Agreement, such Agreements shall be deposited with the Director-General of the WTO.

#### *Article XV*

##### *Withdrawal*

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

2. Withdrawal from a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

*Article XVI*

*Miscellaneous Provisions*

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

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

**Explanatory Notes:**

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

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

## **LIST OF ANNEXES**

### **ANNEX 1**

#### **ANNEX 1A: Multilateral Agreements on Trade in Goods**

**General Agreement on Tariffs and Trade 1994**  
**Agreement on Agriculture**  
**Agreement on the Application of Sanitary and Phytosanitary Measures**  
**Agreement on Textiles and Clothing**  
**Agreement on Technical Barriers to Trade**  
**Agreement on Trade-Related Investment Measures**  
**Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994**  
**Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994**  
**Agreement on Preshipment Inspection**  
**Agreement on Rules of Origin**  
**Agreement on Import Licensing Procedures**  
**Agreement on Subsidies and Countervailing Measures**  
**Agreement on Safeguards**

#### **ANNEX 1B: General Agreement on Trade in Services and Annexes**

#### **ANNEX 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights**

### **ANNEX 2**

**Understanding on Rules and Procedures Governing the Settlement of Disputes**

### **ANNEX 3**

**Trade Policy Review Mechanism**

### **ANNEX 4**

#### **Plurilateral Trade Agreements**

**Agreement on Trade in Civil Aircraft**  
**Agreement on Government Procurement**  
**International Dairy Agreement**  
**International Bovine Meat Agreement**