

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

RESTRICTED
PC/M/11
16 January 1995

(95-0040)

PREPARATORY COMMITTEE FOR THE
WORLD TRADE ORGANIZATION

MINUTES OF MEETING

Held on 21 December 1994

1. The Preparatory Committee for the World Trade Organization (WTO) held its eleventh meeting under the Chairmanship of Mr. Peter D. Sutherland.

2. The Chairman recalled that at the meeting of the Preparatory Committee held on the occasion of the Implementation Conference on 8 December, he had indicated that three main issues remained outstanding, namely, the Headquarters Agreement, the date and provisional agenda for the first meeting of the General Council, and the composition and chairmanship of the Textiles Monitoring Body. Progress on the Headquarters Agreement and on the TMB issue would be reported on by the respective chairmen of the Sub-Committees on Budget, Finance and Administration and on Institutional, Procedural, and Legal Matters. He himself would take up the question of the date and provisional agenda for the first meeting of the General Council.

A. Review of work under the Sub-Committees

3. Mr. Szepesi (Hungary), Chairman of the Sub-Committee on Budget, Finance and Administration, said that since his previous report to the Committee, the Sub-Committee had held one meeting to consider the final report of the consultants on the management review and the situation regarding the negotiations on the Headquarters Agreement. With regard to the management review, the consultants had presented their final report to the Director-General and to himself on 16 December, in compliance with the deadline defined in their mandate. At the Sub-Committee's meeting on 19 December, an extract of the report had been distributed to each member. For technical reasons, the full report would be made available the following day, and each delegation would receive one numbered copy. He would insist on maintaining the confidential nature of this report, since the whole process, and its results as embodied in the final report, had been designed for the exclusive use of Preparatory Committee members and the Secretariat's senior management. Nobody outside this circle should have access to the report, either in full or in part. The report might be used, whenever appropriate, as a point of reference in future discussions regarding the structure of the WTO Secretariat, the optimal use of its available resources, the internal organization of work within the Secretariat as well as its requirements in terms of staffing. The Sub-Committee recommended that the Preparatory Committee take note that a report on the management review had been presented, and agree to forward the report to the competent bodies of the WTO for consideration.¹

4. With regard to the negotiations on the Headquarters Agreement, he recalled that in his report to the Committee at its meeting on 30 November, he had indicated that progress had been made on

¹For action taken by the Committee on this matter, see under Section C below.

certain technical aspects of physical facilities but that a number of answers were still awaited from the Swiss authorities. These concerned a commitment for the long-term accommodation of the WTO if and when the Centre William Rappard became inadequate, the possible division of the new conference room into two smaller rooms of some 300 seats, and the accommodation for and facilities in favour of the least-developed country members. With regard to the equally crucial matter of privileges and immunities, detailed replies and a more forthcoming position from the Swiss authorities were also awaited on some major sticking points such as taxation, in particular the Value Added Tax and the taxation of pensions, work permits and residence permits. Although the Chairman had indicated at the Implementation Conference that the process on the Headquarters Agreement would be accelerated, he had to report, regrettably, that since the Swiss authorities needed more time to prepare the detailed and hopefully more favourable replies to a number of these important questions, no negotiating session could be scheduled in December. In these circumstances, he and the Chairman had organized a meeting of a limited number of Preparatory Committee members with key Swiss negotiators in order to have their main and deepest concerns recorded so that the Swiss authorities, at the political level, could create the conditions for greater flexibility and pragmatism in their approach to some of the key issues. On 19 December, he had reported to the Sub-Committee on these developments, and a number of delegations had expressed their serious preoccupations in the discussion that had followed. The Swiss authorities had indicated at that meeting that they would be ready to resume negotiations from 12 January 1995, with a view to achieving substantial progress by the end of that month. The aim could then be to reach an overall agreement during the first half of February. He was confident that this was a realistic objective if the Swiss authorities adopted a more flexible and pragmatic position, and were prepared to satisfy some basic expectations and requirements regarding issues that they might consider to be sensitive.

5. Accordingly, the Sub-Committee recommended that the Preparatory Committee agree to extend the mandate of the negotiating team acting on behalf of the GATT/WTO. The Sub-Committee also recommended that a progress report on the negotiations be presented to the first meeting of the General Council of the WTO and that the overall results of the negotiations be transmitted for approval to a subsequent meeting of the General Council.²

6. The Chairman noted that the Preparatory Committee's draft report to the WTO (PC/R/W/1/Rev.2) had identified a number of issues related to the work of the Sub-Committee on Budget, Finance and Administration on which it had not been possible to conclude consideration this year. These would require early attention and decisions by WTO bodies. In this respect, he wished to underline the urgency of the issues that were particularly important to the staff and the good functioning of the Secretariat. It was generally recognized that GATT staff had provided an efficient and high quality of service throughout the Uruguay Round negotiations and in managing the transition from the GATT to the WTO. He was convinced that the staff represented a very precious asset, and it was important, in making the transition to the WTO, that this strength was not lost.

7. The Committee took note of the statements and of the report by the Chairman of the Sub-Committee.

8. Mr. Kesavapany (Singapore), Chairman of the Sub-Committee on Institutional, Procedural and Legal Matters, said that, regrettably, the absence of political goodwill and flexibility had resulted in an impasse on the question of the composition of the Textiles Monitoring Body. Under the circumstances, he could only urge the parties concerned to show greater understanding for the need to accommodate each others' interests, without which it would be difficult to find a solution to this

²Idem.

problem. In the light of this impasse, he recommended that the question of composition of the TMB be referred to the WTO for appropriate action.³

9. On another matter, he recalled that he had recently sent to delegations for their consideration a draft decision on the continued application under the WTO Agreement on Customs Valuation of invocations of provisions for developing countries for the delayed application and reservations under the Tokyo Round Customs Valuation Code. Since it appeared now that this matter required further consideration, he recommended that this issue also be transmitted to the WTO for appropriate action.⁴

10. The representative of Hong Kong said that, in a spirit of compromise, Hong Kong, together with the majority of the participants involved in the process on the TMB issue, had not rejected the non-negotiable final proposal submitted by the Preparatory Committee Chairman, even though it had not found the proposal entirely satisfactory. Since then, however, there had been no clear response on the part of the importing countries, and there appeared now to be an impasse as a result of the intransigence of only a few participants. The WTO would enter into force on 1 January 1995, which should be the beginning of the implementation phase of all the results of the Uruguay Round, as also of the integration of the textiles and clothing sector into the WTO, which was one result of the Uruguay Round that benefitted developing countries in particular. However, the integration programme under the WTO Agreement on Textiles and Clothing was based on a system of notifications and multilateral surveillance that was built around the TMB. Since notifications were to be made to the TMB and circulated and examined by it, one could not even make a start without this body. It appeared therefore that the Agreement on Textiles and Clothing would not after all be implemented as from day one of the WTO. The selective implementation of Uruguay Round results in this way had not been negotiated, and was not something that those involved in the negotiations on this sector should be asked to accept. Therefore, until the composition of the TMB was finalized, Hong Kong would find it difficult to address arrangements for making other WTO institutions operational. The exporting countries had consistently shown a willingness, and remained willing, to work for a solution. However, their goodwill should now be quickly matched by a corresponding attitude on the part of the importing countries if the WTO was to be launched satisfactorily.

11. The representative of India associated his delegation with Hong Kong's statement. It was regrettable that the Preparatory Committee's mandate remained unfulfilled because of an outstanding issue concerning the TMB. As Hong Kong had stated, it was difficult to see how the implementation phase of the WTO could possibly begin without agreement on an issue as critical as the TMB. Non resolution of this issue was all the more regrettable because the developing exporting countries had demonstrated flexibility time and again only to be confronted by total inflexibility on the part of importing countries. The WTO Agreements were a single legal undertaking, and selective implementation would undermine the very legal basis of the Uruguay Round results. India considered the recent proposal submitted by the Preparatory Committee Chairman to be totally non-negotiable and final. If this issue remained unresolved, India would be forced into a situation in which its ability to cooperate in finalizing arrangements for making the WTO Agreement operational would be seriously jeopardized.

12. The representative of Brazil said that outsiders would be surprised to learn that this issue remained unresolved, given that governments had been able to agree on so many other issues of no less complexity. This clearly demonstrated that textiles and clothing continued to be an area of major concern for many WTO members-to-be. While it should therefore be given special care and attention, it should not jeopardize a major collective goal, namely the faithful and timely implementation of the

³Idem.

⁴Idem.

WTO Agreements. A decision on the composition of the TMB was a prerequisite for the implementation of the WTO, and should be taken before the WTO Agreement came into force. While the final proposal submitted by the Preparatory Committee Chairman did not address all the concerns of the exporting countries, it had not been rejected by them in the expectation that all parties could agree to it expeditiously. Brazil, like others, still hoped that all those that had a specific interest in this issue would respond quickly and positively to that proposal.

13. The representative of Pakistan said that the WTO Agreement on Textiles and Clothing was of primary interest for a large number of developing countries, including Pakistan. One of the most critical areas of the Agreement was the establishment of the TMB, which would be responsible for supervising the implementation of the Agreement and examining the conformity of any measures taken thereunder. Pakistan, along with a number of other countries, had participated in good faith in the consultations on the composition of the TMB. Although the Chairman's final compromise proposal had fallen short of its concerns, Pakistan had not objected to the proposal. However, owing to the inflexibility of some countries, it had not been possible to finalize the agreement. His delegation joined others in expressing regret at this situation, and was unable to visualize how the WTO could become operational without a resolution of the issue of composition of one of its most important bodies. He urged that goodwill and good faith be reciprocated by others, and that the composition of the TMB be agreed so that it would be possible to make the WTO operational.

14. The representative of Malaysia, speaking on behalf of the Informal Group of developing countries, said that although the Chairman's final proposal had not been to the developing countries' liking, they had regarded it as a way out of the impasse. It was therefore regrettable, and disappointing, that this matter still remained unresolved. While 1995 would see the integration of textiles into the general disciplines of the multilateral trading system, it would also see the birth or the enlargement of certain regional groupings which would involve some realignments and complicate the trade situation for developing countries. He hoped that the TMB question would be resolved as soon as possible so that many of these complications could be addressed by that body as soon as the WTO began operating. He called on the countries concerned to be generous on this issue so that it could be resolved by early January.

15. The representative of Thailand, speaking on behalf of the ASEAN countries, shared the previous speakers' concerns that an important element of the WTO had not yet been settled even though the WTO would enter into force in a few days' time. In a spirit of compromise, the ASEAN countries had agreed to the Chairman's final proposal despite finding it unsatisfactory. However, nothing had been heard from the importing countries. The implementation of the WTO would get off to a bad start without an agreement on the composition of the TMB. Indeed, without the TMB in place, the WTO could not effectively operate. It was inappropriate to be selective on issues to be implemented and to leave others for future negotiations. He urged that efforts be made by the importing countries to bring this issue to a successful conclusion.

16. The representative of Turkey regretted that a consensus had not proved possible on this issue. His delegation had been constructive and flexible in the consultations, and had expressed its readiness for a compromise solution when the Chairman had presented his final proposal. It appeared, however, that a similar forthcoming approach from some other countries was lacking. A failure to decide on the TMB composition should not have negative repercussions on the smooth operation of the WTO institutions at the very outset of their establishment early in 1995.

17. The representative of Morocco regretted that the WTO would enter into force on 1 January without the TMB issue having been resolved, and that this might be damaging for the implementation of the WTO since it might give rise to suspicion, distrust and confrontation instead of confidence and cooperation. While Morocco had responded positively to the Chairman's appeal for flexibility, flexibility

should not be a one-way street. He hoped that with goodwill on all sides, a rapid solution would be found.

18. The representative of Korea said that his delegation, like others, was concerned over the failure to reach agreement on this issue, which remained one of the most important difficulties encountered on the eve of the launching of the WTO. He called on all to take a wider view on the comprehensive and ambitious agreement reached after seven years of painstaking negotiations. His delegation believed that the Chairman's proposal at this stage reflected the greatest efforts of each delegation.

19. The representative of Uruguay associated his delegation with the statements by Hong Kong and other previous speakers. Uruguay considered this element of the Preparatory Committee's mandate very important, and could see no substantive reason for the Chairman's proposal not to have been adopted yet. This was an inappropriate situation which had to be resolved immediately.

20. The representative of Egypt said that this was an important matter for Egypt too, and supported the statements by Hong Kong, India and other previous speakers. He hoped that an agreement on the composition of the TMB could be reached as early as possible in January.

21. The representative of Mexico said he fully supported the statement by Morocco.

22. The representative of the European Communities said that he had noted the previous speakers' statements, and understood the importance they attached to the question of textiles and clothing, which was sensitive both for importing as well as exporting countries. However, questions of procedure and substance should not be confused. All were entering a new phase, one in which the Multifibre Arrangement would be dismantled, with time frames and obligations on all that would result in liberalized trade in this sector. To his knowledge, however, the question of the composition of the monitoring body had at no time been raised in the negotiations. For some twenty-one years, the Textiles Surveillance Body had operated to the satisfaction of all, based upon a certain criterion of composition. One was suddenly now told that this composition was no longer convenient. More time, and a better explanation, was needed in order to understand why this previously satisfactory composition was no longer considered to be so. Once this was understood, perhaps some flexibility in positions could be found.

23. The representative of the United States said that the United States had concerns similar to those of the Community regarding the need for a balanced, impartial TMB. It was clear that a consensus did not exist on the composition of this body. His delegation was prepared to resume discussions on this issue in early January in the hope of facilitating an early resolution to this important matter.

24. The representative of Canada said that his Government's position on this issue had been stated on previous occasions. His delegation was prepared to work hard to bring this matter to a successful conclusion early on in the WTO.

25. The Committee took note of the statements and of the report by the Chairman of the Sub-Committee.

26. Mr. Manhusen (Sweden), Chairman of the Sub-Committee on Services, said that the final meeting of the Sub-Committee on Services, held on 16 December, had dealt with the negotiations on basic telecommunications, the verification of services schedules and the scope of the GATS. The Sub-Committee had heard a report on the meeting of the Negotiating Group on Basic Telecommunications held on 12 and 13 December, which had largely been devoted to discussion of the responses to the questionnaire on basic telecommunications. Future meetings of the Group would focus to a greater extent on outstanding technical and conceptual issues related to the negotiation and scheduling of commitments. The next meeting of the Group would be held on 27 and 28 February 1995 and would

be followed by bilateral consultations among delegations. Following an informal meeting on 15 December, the Sub-Committee had completed the verification of the schedules of commitments in services submitted by Ecuador and Slovenia, which were now before the Preparatory Committee. The informal meeting had also examined the schedules of six other countries, namely, Angola, Burundi, Mali, Qatar, St. Kitts and Nevis and the United Arab Emirates. It had been made clear in these cases that bilateral negotiations were not finished and would be resumed in 1995. Verification of the schedules would take place when the negotiations had been completed.

27. With regard to the issues relating to the scope of the GATS, he was reporting, on his own responsibility, to the Preparatory Committee on the outcome of the consultations, since it had regrettably not been possible for the Sub-Committee to produce an agreed report. He recalled that during the Uruguay Round negotiations, questions had been raised as to whether certain categories of measures fell within the scope of the GATS. Towards the end of the negotiations, many participants had felt that the questions raised had not been sufficiently discussed by the Group of Negotiations on Services (GNS). At the first meeting of the Sub-Committee on Services, it had been agreed that continuing work on issues relating to the scope of the GATS should be a matter of priority for the Sub-Committee in the light of the agreed deadline of 15 December 1994, and that the Chairman should start a process of informal consultations on the subject.

28. The Sub-Committee had reached agreed conclusions on the following items:

- (a) measures relating to judicial and administrative assistance At the end of the Uruguay Round, it had been agreed by participants, as reflected in document MTN.GNS/W/177/Rev.1/Add.1, that Article II of the GATS would not apply to measures relating to judicial and administrative assistance. This agreement had been based on the view that discrimination between service suppliers of different Members arising from judicial and administrative assistance measures, apart from what was already stipulated by the provisions of the GATS, would not have any significant effect on conditions of competition between service suppliers. In the subsequent consultations, it had been agreed that the same logic could be applied to the whole of the GATS and that therefore none of the provisions of the GATS would apply to such measures. It had further been agreed that this conclusion should be embodied in a draft decision to be submitted to the WTO Council for Trade in Services for adoption;
- (b) measures relating to the entry and stay of natural persons, where the main question addressed had been the basis on which a distinction would be made between "temporary" and "permanent" residency and employment. This question had been raised during the Uruguay Round negotiations in an attempt to clarify commitments by participants in the area of movement of natural persons. Participants in the consultations had considered whether the definitions contained in national schedules were sufficient to make clear what participants meant by "temporary" stay or whether there was need for further clarification. It had been concluded that what appeared in the schedules of participants was sufficiently clear, and to report that there was no need for further multilateral work on this issue.

29. With regard to the three remaining categories of measures under consideration, namely, measures relating to social security, measures relating to the settlement of disputes pursuant to bilateral investment protection agreements, and measures relating to the entry and temporary stay of natural persons pursuant to certain bilateral agreements, it had not been possible to reach agreement. Some delegations had maintained that these measures were outside the scope of the GATS, others that they were inside. Discussion of ways in which such measures might affect trade in services had not resolved this difference of views. In accordance with the statement by the GNS Chairman on

14 December 1993 (MTN.GNS/W/260), he would be reporting the outcome of these consultations in greater detail, and on his own responsibility, to the Council for Trade in Services for appropriate decision.

30. The representative of India said he wished to place on record his delegation's appreciation for the efforts by the Chairman of the Sub-Committee on Services and by the Secretariat during the course of consultations on issues relating to the scope of the GATS. His delegation had stated its position on this matter at the final meeting of the Sub-Committee. As the Sub-Committee Chairman had made clear, his statement had been on his own responsibility, since it had not been possible for the Sub-Committee to agree on a formulation. While his delegation had no difficulty with the Preparatory Committee taking note of the statement by the Sub-Committee Chairman, it wished to make clear that it did not acquiesce in the statement.

31. The representative of Pakistan said that his delegation's position on the subject of the scope of the GATS was well known and had been fully reflected at the final meeting of the Sub-Committee. Article I:1 of the GATS provided that the Agreement applied to "measures by members affecting trade in services", which was an all-inclusive formulation. No measures could be excluded unless this was expressly provided for. The Sub-Committee Chairman had given some examples of specific exclusions. Pakistan had participated in the consultations on the concerns expressed by some participants in relation to some measures, including the so-called social security measures. These consultations had shown that it was difficult to conclude that any category of social security measures was by definition incapable of giving rise to discrimination likely to affect the supply of services. While there was no alternative but to accept the disagreement, this would clearly not prejudice the position of any WTO member, and the mechanisms available under the WTO could be utilized by them to raise and to deal with any problems arising out of the implementation of the GATS and the commitments made thereunder. Pakistan wished to see a satisfactory conclusion to this issue.

32. The representative of Switzerland said that his delegation fully agreed with the report by the Sub-Committee Chairman and, like him, regretted that work had not been finalized on a number of issues relating to the clarification of the scope of the GATS, particularly in respect of social security measures. Switzerland had contributed substantially to the discussion on these issues, and had made constructive proposals that had been supported by many participants. However, it had proved impossible to conclude discussion on all the specific items in this mandate within the agreed deadline, in particular on social security. The lack of agreement on these subjects meant that there would be no basis for members to assume their responsibilities thereon. Switzerland believed that the mandate given in December 1993 had not been fulfilled, and that consultations should be continued. Switzerland would cooperate constructively in such consultations so that a solution acceptable to all could be reached, and it awaited with interest the report to be made by the Sub-Committee Chairman to the first meeting of the Council for Trade in Services.

33. The representative of Egypt said that twenty-four hours before the conclusion of the Uruguay Round negotiations in December 1993, the statement by the GNS Chairman had been adopted without sufficient discussion, and in the absence of a number of delegations, including his own. Despite that, Egypt had honoured its responsibility in the process laid down in that statement. Egypt, like some others, had believed from the beginning, and continued to believe, that the question of whether or not the measures in question fell within the scope of the GATS was the wrong question to ask because the scope was clearly defined in Article I:1 of the GATS to cover "measures affecting trade in services". Egypt had participated in the consultations in good faith in trying to fulfil the mandate laid down in December 1993, which, he reiterated, had been adopted at the last moment and in the absence of some delegations. The consultations, despite being informative and educational, had not revealed any new elements in relation to the scope of the GATS.

34. One of the most important issues raised in the discussions was that relating to social security measures. He recalled that this issue had been discussed fully in the context of the Uruguay Round negotiations on the Annex to GATS concerning the Movement of Natural Persons, and it had been concluded then that this matter should be left to the application of the GATS on a case-by-case basis, and that there should not be any explicit exclusions from the scope of the GATS. Egypt appreciated that some other participants had also shown good faith in the course of the consultations and had refrained from listing MFN exemptions pending the outcome thereof. Egypt was surprised that some participants were not keen to take up the legal coverage available to them, and believed that they subscribed to certain interpretations of the GATS that Egypt did not share. The only appropriate course of action for the credibility of the system, and one that would be fair to the rights of all members, would be to uphold the legal provisions of the GATS and to apply them in good faith. The consultation process had now ended without any agreement on a report to the Council for Trade in Services. This meant that the matter was closed and that any concerns should now be raised before the Services Council and be subject to the rules and procedures of the WTO. The past consultations and the final disagreement on the report should not and could not prejudice the rights of any WTO members. The December 1993 statement of the GNS Chairman, which had provided for these consultations, had no validity beyond its specified deadline of 15 December 1994.

35. The representative of Korea said that his delegation had no essential problem in putting the three remaining categories of measures under consideration in the consultations outside the scope of the GATS. However, it would be appropriate to allow more time to explore a viable solution. In the event that a consensus was not reached on these questions, Korea reserved its rights to take any possible future action in an appropriate form, including MFN exemptions or national treatment reservations.

36. The representative of Australia expressed disappointment that it had not been possible to take the negotiations on the scope of the GATS further. Australia had hoped that it would have been possible during the course of the past year to resolve these issues. The problem that arose now was that delegations were not yet in the position to exercise their responsibilities in regard to the scheduling or exemption of measures in the particular area of the social security questions that were still unresolved. Australia remained ready to participate in further multilateral work to ensure that the rights of all delegations in this issue would not be prejudiced.

37. The representative of the European Communities said it was regrettable that a conclusion to these discussions had not been reached. To conclude simply that agreement could not be reached was not sufficient, and his delegation hoped that a dialogue could be resumed again. It was clear that there was no agreement at this stage, which the Community regretted. It believed that social security measures did not enter into the scope of the GATS. Under the circumstances, the Community would assume its responsibility when the situation arose and reserved its rights for the future. However, it believed that it would be wise to continue the dialogue.

38. The representative of Canada regretted that the Sub-Committee had not been able to reach any common understanding on the extent to which the three remaining categories of measures under consideration affected trade in services. More regrettably, in the absence of success for the past year to reach a common understanding on these issues, some participants were not prepared to see any sort of mechanism set up to continue the discussion thereon. Canada was also surprised and disappointed by the small number of participants that had refused to approve a report of the Sub-Committee submitted for approval by its Chairman at its final meeting. These participants had in effect refused to allow a factual description of the different views held over the past year to be recorded in the report of the Sub-Committee to the WTO Council for Trade in Services, which would make it very difficult to work by consensus in the future. In legal terms, it remained unclear which categories of measures were covered by the disciplines of the GATS, and to which extent. In political terms, the inability not only

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95-0041 MF	F E S	S/NGMTS/W/002/Add.01
95-0042 MF	E F S	C/RM/M/052
95-0043 MF	E F S	TBT/Notif.95.006
95-0044 MF	E F S	G/TBT/Notif.95.002
95-0045 MF	E F S	C/RM/M/051
95-0046 MF	E F S	G/RS/028
95-0047 MF	E F S	GPR/W/141
95-0048 MF	E F S	S/NGBT/004
95-0049 MF	E F S	L/7463/Add.06
95-0050 MF	E F S	L/7551/Add.01
95-0051 MF	E F S	Spec(94)044/Rev.02
95-0052 MF	E F S	L/7375/Add.10
95-0053 MF	E F S	PC/R/Add.01

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to reach a common understanding in this area but even to agree on a mechanism for further discussion was setting the GATS off to a very bad start. In the absence of a common understanding, Canada reserved all its rights with respect to its position regarding whether and to what extent certain categories of measures fell within the scope of the GATS.

39. The representative of New Zealand said that his delegation too, like others, had been disappointed by the outcome of this process, and believed that more work was clearly needed. For the record, he wished to draw attention to a statement his delegation had made jointly with Australia at the Sub-Committee's meeting on 16 December. New Zealand had stated then that the absence of any agreed common understanding had made it difficult for delegations to exercise their responsibilities. His delegation would try and work on these issues together with others in the new year, but wished, in the meantime, to reserve its rights on the question of whether certain categories of measures fell within the scope of the GATS.

40. The representative of Finland, speaking on behalf of the Nordic countries, said that they fully shared the Community's views on the complex issue of the scope of the GATS. The Nordic countries wished to recall their statement at the meeting of the Sub-Committee on 16 December, in which they had provided their perspective on the history of the negotiations as well as on the subject matter of scope. The Nordic countries believed that the three unresolved categories of measures fell outside the scope of the GATS, and wished to reserve their rights for the future on these issues.

41. The representative of Hong Kong said that the issue of the scope of the GATS had turned out to be more controversial than expected. Of the three remaining issues under consideration, the one on social security measures had occupied most attention and yet had eluded a common understanding thus far. However, this was an issue that had a limited impact on trade in services, and the Sub-Committee had done a good job in examining how, under these circumstances, the MFN and national treatment implications could be handled. Since these principles formed the cornerstone of the GATS, it was of the utmost importance to get this right. Hong Kong did not want to see these two cardinal principles compromised even before the GATS entered into force. There were areas that needed to be further clarified, such as the scheduling of national treatment limitations. Further work was certainly needed, and Hong Kong looked forward to contributing constructively to it in due course. Meanwhile, given that there was no agreement, and a short break in the discussions on this issue, Hong Kong welcomed the opportunity to catch up with other substantive issues that would be before the Council for Trade in Services.

42. The representative of Japan regretted that it had not been possible to reach a common understanding on the outstanding issues, including on social security. His delegation wished to note that it had made clear its fundamental position at the meetings of the Sub-Committee, namely that social security measures should be considered to be outside the scope of the GATS. Since a common understanding on these issues had not been achieved, it was understood that delegations were unable to exercise their own responsibilities concerning the schedules. Japan believed that work on these issues needed to continue, and was prepared to participate in future work in a cooperative spirit.

43. The representative of Austria said that his delegation too regretted that a common understanding had not been possible on the question of the application of the GATS to certain measures, including social security measures. Austria, like the majority of participants in the consultations, believed that these measures fell outside the scope of the GATS. However, some participants that held a different view had refused to continue discussion on this matter, which therefore remained unresolved. In the absence of a common understanding, Austria wished to reserve its rights.

44. The representative of India, noting the reference by some speakers to a continuation of discussions, said that India had made clear in the Sub-Committee's meeting that the discussion that

had been held within the framework of the 14 December 1993 statement by the GNS Chairman was now over. There had been no agreed conclusion, and the mandate given by that statement had been completed without any result. However, this did not preclude delegations from raising the issue afresh within the framework of the WTO Agreement, as and when they so wished. India was unable to agree to the idea that there could be a continuation of discussions. This clearly meant that all parties should assume their responsibilities. Some speakers had said that a small number of participants had blocked the adoption of the report of the Sub-Committee. He wished to note, in this regard, that there had been disagreement over only one sentence in the draft report. Even though as many as five alternatives had been suggested by several delegations, including Australia and the United States, none of these had been acceptable to one major delegation.

45. The Committee took note of the statements and of the report by the Chairman of the Sub-Committee.

46. The Chairman, on behalf of the Chairman of the Sub-Committee on Trade and Environment, said that there were no developments to report in this area beyond those reported at the meeting of the Committee on 8 December.

47. The Committee took note of the statement.

B. Paragraph 8(b)(i) of the Decision establishing the Preparatory Committee

48. The Chairman recalled that market access schedules on goods of the following seven countries had been annexed provisionally to the Marrakesh Protocol subject to verification: Bangladesh, Benin, Congo, Mauritania, Niger, Tanzania, and Uganda. These schedules had now been verified. Twelve new schedules, including the French version of the Canadian schedule, had been received after the Marrakesh Ministerial meeting. Of these, three had been verified, namely those of Burkina Faso, Mali and Slovenia. The French version of the Canadian schedule had also been verified. Eight schedules therefore remained yet to be verified. As regards schedules of least-developed countries, he recalled that in accordance with paragraph 1 of the Decision on Measures in Favour of Least-Developed Countries, these countries had until 15 April 1995 to submit their schedules and retain original membership status. At present, there were still thirteen least-developed countries which would have to submit their schedules by that date. He recalled also that in the verification exercise before the Marrakesh meeting, four countries, namely Cameroon, Côte d'Ivoire, Gabon and Senegal - the schedules of which had been verified and annexed to the Marrakesh Protocol - had been given until 15 April 1995 to complete missing information on other duties and charges.

49. With regard to services, the Preparatory Committee had already noted the oral report of the Chairman of the Sub-Committee on Services that the verification of schedules of commitments submitted by Ecuador and Slovenia (documents L/7566 and PC/W/31) had been completed. The schedules of six other countries, namely Angola, Burundi, Mali, Qatar, St. Kitts and Nevis and the United Arab Emirates, were still subject to bilateral negotiations to be resumed in the new year.

50. As regards the finalization of negotiations on schedules of concessions and commitments in goods and services, it appeared that a number of governments, including Angola, Burundi, Grenada, Mozambique, Qatar, St. Kitts & Nevis and the United Arab Emirates would not be in a position to conclude the verification of their schedules before the entry into force of the WTO. In principle, therefore, they would need to follow accession procedures under Article XII of the WTO Agreement in order to become Members of the WTO. This matter had been brought up in the informal verification meetings for goods and services schedules, held on 15 and 16 December, and delegations had generally been of the view that it was desirable to facilitate the accession of the governments concerned. The

draft decision concerning the finalization of negotiations on schedules on goods and services in document PC/W/29, which he would propose for adoption at the present meeting,⁵ had been prepared with this end in view. It intended to facilitate the accession of those governments that had become contracting parties to the GATT 1947 in the course of 1994 and that would need additional time to finalize negotiations on these schedules with other Uruguay Round participants under Article XII of the WTO Agreement on terms identical to those which would have applied had they been able to finalize negotiations on their schedules prior to the entry into force of the WTO Agreement.

51. On another matter, he recalled that existing working parties on the accession of states or separate customs territories to the GATT 1947 had also conducted work on aspects of foreign trade régimes in respect of governments that had expressed interest in WTO membership. He proposed that the Preparatory Committee recommend that, as and when requests were made by these states or separate customs territories to accede to the WTO Agreement, the General Council agree that the existing GATT 1947 working parties continue their work as WTO Accession Working Parties, with standard terms of reference and under their respective current chairpersons.⁶

C. Action by the Preparatory Committee

52. The Chairman noted that a certain number of recommendations had been made at the present meeting, particularly on questions on which work could not be concluded under the Preparatory Committee and which should, therefore, be further examined and acted upon by the appropriate bodies of the WTO. These recommendations related to the following areas: the Headquarters Agreement; the report of the consultants on the management review; the Textiles Monitoring Body; the WTO Customs Valuation Agreement; and the GATT 1947 Accession Working Parties. He proposed that the Committee approve these recommendations, which would be incorporated, in appropriate textual form, in the report of the Committee to the WTO.

53. The Committee so agreed.

54. The Chairman then drew attention to the Draft Decision on Finalization of Negotiations on Schedules on Goods and Services in document PC/W/29, and proposed that it be adopted.

55. The Committee so agreed.⁷

56. The Chairman then drew attention to a set of requests for accession to the WTO from the Kingdom of Cambodia (PC/W/19), the former Yugoslav Republic of Macedonia (PC/W/18) and the Republic of Uzbekistan (PC/W/20), and proposed that the Committee agree to establish working parties to examine these requests and report to the General Council of the WTO.

57. The Committee so agreed.

58. The Chairman then proposed that, in accordance with the process agreed by the Committee in May (PC/M/2, paragraphs 17-23), and the recommendation just adopted with regard to GATT 1947 Accession Working Parties, the existing working parties currently examining the requests for accession to GATT 1947 by the Russian Federation and Ukraine, examine the requests by these two governments

⁵Idem.

⁶Idem.

⁷The Decision was subsequently issued as PC/17.

for accession to the WTO contained in documents PC/W/26 and PC/W/30 respectively, and report to the General Council.

59. The Committee so agreed.

D. Date and provisional agenda of the first meeting of the General Council

60. The Chairman recalled that at the Implementation Conference he had indicated his intention to make a proposal for approval by the Committee at its present meeting on the date and provisional agenda of the first meeting of the General Council. In making his proposal, he was basing himself on the views of a number of delegations, all of whom clearly shared the basic objective that the WTO should get off to as prompt and efficient a start as possible. With regard to the date of the meeting, he proposed 31 January 1995, which was exactly thirty days following the entry into force of the WTO. This would also provide adequate time for governments to make the necessary preparations in capitals and in Geneva for this meeting. As regards the provisional agenda, he proposed that the first meeting of the General Council be devoted entirely to the most immediate and pressing "housekeeping" tasks related to putting in place the WTO's working structure, adopting the Preparatory Committee's report to the WTO including the Decisions and Recommendations contained therein, designating the officers to conduct the work of the main WTO bodies, and so on. The aim would be to get the WTO off to a quick start, for which the world trading community, as well as governments, had waited long enough. In keeping with the provisional rules of procedure for the General Council, an airgram convening the meeting and setting out the provisional agenda would be issued by the Secretariat not later than ten calendar days before the meeting.

61. The Committee agreed to the Chairman's proposals.

E. Report of the Preparatory Committee to the WTO

62. The Chairman drew attention to the draft report of the Committee to the WTO in document PC/R/W/1/Rev.2. He proposed that the Committee adopt the report to the WTO, on the understanding that the draft report before it would be updated to reflect the proceedings of the Committee at the present meeting, as also the status of ratifications as of the date of entry into force of the WTO. The final report would be circulated to members shortly.

63. The representative of Canada said it was his understanding that a report to the Committee had been prepared by the Informal Contact Group on Anti-Dumping and Subsidies concerning the matter of arbitration procedures, and asked whether this would be mentioned in the update of the Committee's report to the WTO.

64. The Chairman said that this would be reflected in the updated version of the Preparatory Committee's report.

65. The Committee took note of the statements and adopted its report to the WTO on the basis of the understanding as stated by the Chairman.

F. Ratification

66. The Chairman said that it was important, for several reasons, that all governments in a position to do so should deposit their instruments of ratification by 31 December. Delegations wishing to obtain

information on the procedures involved should contact the Secretariat immediately. He drew attention to document PC/5, which set out the Administrative arrangements put in place by the Secretariat for the period 23 to 31 December to enable governments to transmit instruments of ratification or letters of acceptance right up to the WTO's entry into force.

67. The representative of Peru said that, on 15 December, his country's Congress had unanimously approved the WTO Agreement and the Multilateral Trade Agreements contained in the Final Act of the Uruguay Round. By virtue of this decision by the legislative authority, Peru's President had, on 16 December, subscribed to the instrument of ratification, which his delegation would deposit with the Secretariat shortly. This act showed his country's interest in contributing to the functioning of the WTO from the very first day of its birth. Peru's commitment did not end with the ratification of the WTO Agreement, and it was ready to participate in any initiative which might be taken by the Director-General towards the liberalization of world trade.

68. The Chairman reiterated the importance of depositing instruments of ratification in time, a matter that was directly related to participation in the General Council. As set out in Article XIV:1 of the WTO Agreement, acceptances after the WTO's entry into force, i.e. after 1 January 1995, would take effect on the thirtieth day following the date of such acceptances. He wished to underscore the fact that governments which accepted the WTO after 1 January would only be able to attend the first meeting of the General Council, scheduled for 31 January 1995, on the basis of the Preparatory Committee's Decision of 8 December regarding the participation in WTO bodies of certain signatories (document PC/10), and not as members. As of the present, 71 governments had either formally ratified or concluded their domestic processes, a significant number of which had not yet formally ratified by depositing their instruments of ratification. It was his expectation that the vast majority of governments would ratify the WTO Agreement before the end of the year.

69. The Committee took note of the statements.