

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

RESTRICTED
PC/IPL/M/4
23 September 1994

(94-1904)

SUB-COMMITTEE ON INSTITUTIONAL,
PROCEDURAL AND LEGAL MATTERS

MINUTES OF THE MEETING HELD ON 14 SEPTEMBER 1994

1. The Sub-Committee on Institutional, Procedural and Legal Matters held its fourth meeting on 14 September 1994 under the Chairmanship of Mr. K. Kesavapany (Singapore).
2. The Chairman said that this meeting, the first since the summer break, marked the beginning of a very intensive period of work leading to the Implementation Conference. He wished to impart a sense of urgency to all, considering that only about nine weeks remained until mid-November, which he looked upon as a target for the completion of all the work that could reasonably be achieved in the context of the Sub-Committee.
 - A. Paragraph 8(b)(ii) of the Decision establishing the Preparatory Committee
 - (i) Terms of reference for WTO bodies
3. The Chairman recalled that at the meeting of the Sub-Committee on 19 July, he had stated that it would be the responsibility of individual delegations to raise any particular issues concerning this matter if they so wished. It was understood, of course, that the terms of reference for the Committees on Budget, Finance and Administration, Balance-of-Payments Restrictions and Trade and Development would be brought before the Sub-Committee once they were ready for consideration. As all were aware, the Sub-Committee had requested the Chairmen of the existing GATT Committees to undertake the task of drawing up the terms of reference of these Committees. He had had a recent discussion with these Chairmen with a view to setting a target date for their contribution to the Sub-Committee. It appeared that terms of reference for the Budget Committee might be finalized soon but that the finalization of terms of reference for the other two Committees still needed some more time.
4. Also at the meeting of the Sub-Committee on 19 July, the question of the status in the WTO of the GATT 1947 Committee on Tariff Concessions had been raised by one delegation. In this connection, he recalled that at the meeting of the Preparatory Committee on 22 July, he had expressed his intention to discuss this matter at the next meeting of the Sub-Committee. A number of ideas had been put forward informally concerning both the Committee on Tariff Concessions and the Technical Group on Quantitative Restrictions and Other Non-Tariff Measures. One of these ideas was the possible merger of these Committees in the WTO to fulfil the functions of both these bodies, as well as to continue work on the Integrated Data Base. He would welcome views on this suggestion as also any other proposals that members wished to make in this respect. He recalled that there were other bodies mentioned in Section V of the Secretariat's note in document PC/IPL/W/1 on which he wished to have members' views. It was his understanding that the case of the Joint Advisory Group of the International Trade Centre could be examined by the Sub-Committee on Budget, Finance and Administration in the context of its work on paragraph 8(a)(vi) of the Decision establishing the Preparatory Committee. That would leave the question of the Consultative Group of 18 to be decided upon.
5. Related to the question of terms of reference was that of the format of notifications required to be made under various agreements. The three contact groups that had been created in the areas

of rules, agriculture and TRIPS were planning further work, and some meetings had already been convened. It had been suggested that some work might be needed on TRIMs notifications, which could be undertaken by the Contact Group on TRIPS. He was in touch with the Chairmen of the three Contact Groups with a view to setting a target date for submitting the results of their work.

6. The representative of Australia said that her delegation had been working on terms of reference for the WTO Committee on Agriculture, within the framework of the Contact Group on Agriculture, and hoped to come up with a proposal in time for the next meeting of the Sub-Committee. On a more general level, she wished to note that delegations had sometimes suggested for inclusion under terms of reference concepts which she believed belonged more appropriately to rules of procedure. Her delegation therefore urged that progress on rules of procedure not fall behind, as this resulted in delegations which sought to have certain concerns covered, to deal with them under terms of reference.

7. The representative of Argentina said that the proposed terms of reference on Agriculture referred to by Australia had met with a large degree of support, and that the delegations concerned were waiting for the right time to submit them to the Sub-Committee.

8. The representative of the European Communities said that it would be of use for the Sub-Committee to set priorities. As the Chairman had stated, nine weeks remained, and the main aim of the Sub-Committee was to ensure that the WTO was effective as of 1 January 1995. Clearly, therefore, some elements were more essential than others. For its own part, the Community considered terms of reference and rules of procedure, as well as transitional arrangements, to be a priority. The Community recognized the importance of the other topics that needed to be addressed, but believed that the Sub-Committee should organize its work in such a way that the two priority issues could be dealt with.

9. The Chairman said that the Community had reiterated a point he had made in the past, namely that the Sub-Committee's main aim should be to ensure that the WTO was operational on 1 January 1995. He agreed that the Sub-Committee should try to prioritize its work.

10. The representative of New Zealand agreed that work on terms of reference and rules of procedure was a priority for the Sub-Committee.

11. The Sub-Committee took note of the statements.

(ii) Rules of procedure for WTO bodies

12. The Chairman recalled that in the course of previous discussion on this matter, some delegations had suggested that rules of procedures should be envisaged at three levels, namely those of the Ministerial Conference, General Council and subsidiary bodies. It appeared that this view was widely shared. At the meeting of the Sub-Committee on 19 July, he had suggested reverting to the question of rules of procedure immediately after the summer break and that the Secretariat should, in the meantime, continue to work on drawing up draft rules of procedure for the Ministerial Conference, the General Council and subsidiary bodies.

13. On the basis of inputs received from some delegations as well as earlier discussion on this issue in the Sub-Committee, the Secretariat had recently circulated two non-papers suggesting draft rules of procedure for the Ministerial Conference (document No. 2028) and the General Council (document No. 2029). As suggested by some delegations at earlier meetings of the Sub-Committee, the draft rules of procedure for the Ministerial Conference had been adapted from those for Sessions of the CONTRACTING PARTIES to GATT 1947. The changes therefrom had been indicated in the text. The draft rules for the General Council had been based both on the rules for

Sessions of the CONTRACTING PARTIES as well as on existing practice with regard to meetings of the GATT 1947 Council, a brief description of which had been provided as an Annex to that non-paper. He suggested that the Sub-Committee try to make progress on these. With regard to rules of procedure for subsidiary bodies, he invited delegations to provide inputs, as appropriate, to the Secretariat. The two non-papers provided the basic structure of the rules and contained most if not all the elements that needed to be addressed. They were intended to serve as a basis for further discussion in the Sub-Committee. As would be noted from the two non-papers, a number of issues had been flagged by the Secretariat, by means of footnotes to the suggested rules, for consideration by the Sub-Committee. Since delegations had only recently received these papers, he did not intend to have even a preliminary exchange of views on them at the present time. However, following the suggestion made by New Zealand at the Sub-Committee's meeting on 19 July that work on rules of procedure should keep pace with work in the Sub-Committee as a whole, it would be his intention to hold a substantive discussion on the question of rules of procedure, on the basis of the non-papers by the Secretariat, at the next meeting of the Sub-Committee. He urged delegations to come prepared for such a discussion at that time, on the basis of which the Secretariat would be requested to revise the suggested rules for further consideration by the Sub-Committee.

14. The representative of the United States said that his delegation, as others, would review the Secretariat's non-papers on the suggested rules of procedure for the Ministerial Conference and the General Council in preparation for substantive discussion thereon at the next meeting. He wished to emphasize at the present time, however, that regardless of whether the rules of procedure that the Sub-Committee proposed were standard or specific to each body, and regardless of whether it followed the approach suggested in the non-papers, one had to provide for increased transparency with respect to all WTO bodies. For example, the United States would suggest, at a minimum, unrestricted access to minutes of formal meetings of WTO bodies. As all were aware, his delegation had been pursuing, in the GATT context, improved procedures on circulation and derestriction of documents. His delegation would keep the Chairman informed of developments in that forum so that the Sub-Committee could address the subject in detail at some point that the Chairman deemed appropriate.

15. The representative of New Zealand said that the Sub-Committee needed also to develop rules of procedure for the third-level bodies, namely the subsidiary bodies. It was important to start work on this area soon as well to ensure that it was concluded in good time.

16. The representative of Morocco agreed with the Community's statement on the previous sub-item, namely that the Sub-Committee needed to tackle priority issues first, and said that draft rules of procedure were one such issue.

17. The Sub-Committee took note of the statements.¹

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

(i) Appropriate arrangements for effective cooperation with other inter-governmental organizations

18. The Chairman said that it would appear necessary for the WTO to have arrangements for effective cooperation with those international organizations specifically mentioned in the WTO Agreement and with which the WTO Agreements envisaged cooperation in specific areas. These organizations were the IMF, World Bank, WIPO, CCC, ISO and the three specialized organizations mentioned in the Agreement on Sanitary and Phytosanitary Measures, i.e., the Codex Alimentarius Commission, the International Office of Epizootics and the Secretariat of the International Plant Protection Convention.

¹See also the statements by Australia, the European Communities and New Zealand under sub-item (i) above.

Although the ISO was not an inter-governmental organization as such, in many cases the national bodies dealing with it were quasi- or semi-governmental. He had therefore, subject to the Sub-Committee's approval, included it in the list of organizations with which arrangements for cooperation with the WTO needed to be drawn up. The WTO Agreement envisaged that the WTO should cooperate with the IMF and with the World Bank and its affiliated agencies with a view to achieving greater coherence in global economic policy-making. Moreover, specific functions were envisaged for the IMF in, *inter alia*, Article XV of GATT 1994. Clearly, therefore, cooperative arrangements with these organizations were a priority.

19. In addition, it would be necessary, for operational reasons, for the WTO to have understandings with the other organizations that he had just mentioned. A Ministerial Decision at Marrakesh had already recommended that the WTO Secretariat reach an understanding with the ISO with a view to establishing an information system. The Secretariat had made progress on drafting such an understanding in consultation with the ISO. Furthermore, the Customs Valuation Agreement and the Agreement on Rules of Origin envisaged that specific tasks related to these Agreements would be performed by the CCC, and two Technical Committees under the auspices of the CCC had been established under these Agreements. Therefore, for the purpose of fulfilling these tasks and ensuring that work could be taken up immediately after the WTO entered into force, an agreement with the CCC would also be needed. The TRIPS Agreement envisaged that, in consultation with WIPO, the TRIPS Council of the WTO should seek to establish, within one year of its first meeting, appropriate arrangements for cooperation with bodies of the WIPO. It further called for consultation with WIPO regarding the possible establishment of a common register of national legislations and regulations. Contacts were under way in this respect. The Sub-Committee would try to make maximum progress within the time that remained at its disposal. Again, a policy discussion on the relationship the WTO would have with WIPO would be necessary. As to the Agreement on Sanitary and Phytosanitary Measures, it called for cooperation with the Codex Alimentarius Commission, the International Office of Epizootics and the Secretariat of the International Plant Protection Convention. Here also, more time would be needed to develop the elements that should go into the respective understandings.

20. As for relations with other organizations, many delegations had emphasized, in the course of earlier discussion, the need for effective cooperation between the WTO and UNCTAD. He and the Secretariat had had a preliminary discussion with UNCTAD officials. However, in order to proceed further in this respect, more input from delegations was needed on the specific aspects and the practical ways that this cooperation might take.

21. The Sub-Committee took note of the statements.

(ii) Observer status for international organizations

22. The Chairman said that since one still did not know, apart from two or three cases, which organizations would be requesting observer status in the WTO, it seemed to him that all that could usefully be done at this stage was to develop criteria or conditions, including procedures, for considering future requests for observer status. He recalled that at the meeting of the Sub-Committee on 19 July, during the discussion on this part of the mandate, he had suggested that broad guidelines be developed to facilitate consideration of this question, and had outlined some elements that might be included in such guidelines. In this connection, he drew attention to a non-paper recently circulated by the Secretariat (document No. 2035), in which it had built upon those elements and had suggested criteria and conditions for the granting of observer status to international organizations in the WTO. These were intended to serve as a basis for further discussion in the Sub-Committee. He believed that such guidelines would be a very useful contribution by the Sub-Committee within its broader mandate in this area, namely to make recommendations to the General Council of the WTO concerning the appropriate arrangements with respect to relations with other organizations. He suggested that delegations

not address this non-paper at the present meeting, but that they come prepared for a substantive discussion thereon at the next meeting of the Sub-Committee.

23. The representative of the United States said that one of the most significant ways in which to improve the transparency of the work of the WTO and to derive the benefits from such openness would be to ensure observership and meaningful participation by interested groups. The United States hoped that the Sub-Committee would accelerate its work regarding observer status or participation by international organizations in WTO proceedings, and in that regard would study carefully the non-paper before the next meeting. In principle, the United States believed that all interested international organizations should be considered for observership on the basis of reciprocity and the relevance of their expertise. Although one possibility was to conclude agreements, whether they be formal agreements or informal, with specific organizations on the terms of observership, the Sub-Committee should guard against a process which would be difficult and time consuming given the nine weeks in which it had to work. Not only would any such Memorandum of Understanding need to accommodate WTO requirements, but other international organizations might be constrained by their own rules from entering into long-term agreements. Some organizations had a two-year requirement, for example. Moreover, the terms of each agreement might vary. For example, an international organization such as WIPO might have relatively limited observership based on its specific responsibilities.

24. With respect to observer status for non-governmental organizations, the United States noted that the Sub-Committee on Trade and Environment had been given a specific task to examine participation by those groups. Rather than duplicating efforts, it might be useful for this Sub-Committee to watch the development of the discussion in that forum so that views expressed there could be taken into account. In designing procedures for observership and participation, one might also make a distinction between formal and informal meetings. Generally, formal meetings should be open to designated observers and informal meetings should remain closed except by specific invitation of the Chairman made at the request of the members. The right of a particular observer to participate in meetings of various bodies probably should be circumscribed to ensure that technical expertise was provided when requested and that an observer did not have a general right to participate. In this regard, current GATT 1947 Council practice was a good model. Additionally, designated observers should be able to attend meetings of the General Council but participation in meetings of more specific Committees, such as the Committee on Technical Barriers to Trade, might be more limited.

25. The Sub-Committee took note of the statements.

C. Transitional arrangements

26. The Chairman drew attention to a background note by the Secretariat (PC/IPL/W/5), which provided an overall conceptual framework for approaching this subject. He recalled that at the 19 July meeting of the Sub-Committee, a discussion paper had been circulated on the same subject, and that some delegations had offered preliminary comments on it. Mexico and Austria had followed up since then with written submissions (PC/IPL/W/4 and W/6, respectively). Delegations would note that the recent Secretariat note contained certain elements which had been addressed in the earlier discussion paper. This was no accident because these ideas had been discussed for some time. Since the note had been with delegations for only a very short while, he proposed that a substantive discussion be held on it at the next meeting, adding that the note raised very complex issues which deserved close attention.

27. The representative of the United States said that it was clear from the papers circulated on this issue thus far that much work needed to be done on the implications of the transition from the GATT 1947 to the WTO Agreement. His delegation looked forward to a full consideration of these issues in the Sub-Committee and hoped that discussions on transitional arrangements would focus on

simplifying the coexistence of the two agreements and the transition from one to the other. The United States was particularly concerned with problems associated with the treatment of dispute settlement proceedings that were ongoing at the time the WTO Agreement entered into force and the possibility of conflicting jurisprudence because of the coexistence of the GATT 1947 and the GATT 1994 for any particular period of time. Thought should be given by the Sub-Committee to arrangements related to governments withdrawing from the GATT 1947 and the possibility ultimately of terminating the GATT 1947 and associated bodies at the appropriate time. These were preliminary views and his delegation looked forward to a more substantive discussion at the next meeting.

28. The representative of New Zealand said that the papers recently circulated made clear that there were real and difficult issues that needed to be addressed. At the same time, however, it was important not to generate or search for problems which may not in practice prove to be real problems. One would need to go over potential problems to see whether what was already in place in the WTO, and particularly in the Dispute Settlement Understanding, would be sufficient to resolve some of these issues.

29. The representative of Mexico said that the best way to tackle the amount of work before the Sub-Committee was perhaps to get to work right away. His delegation was ready to introduce its communication in PC/IPL/W/4, and to respond to any queries from other delegations at the present meeting.

30. The representative of Morocco said that all had underlined the importance of the legal issues that the question of transition from the GATT 1947 to the WTO gave rise to. In parallel to the legal arrangements which the Sub-Committee could outline on the issue of transition, one also had to give consideration to the whole issue of the duration of the GATT 1947. In the same way that one spoke of a critical mass of ratifications to enable the WTO to come into effect, one could also speak of a threshold, a limit, beyond which the GATT 1947 would no longer exist. Theoretically, it was sufficient for one contracting party to exist within GATT 1947 for it to continue to exist. While this was perhaps an extreme example, his delegation believed a limit should be set beyond which the GATT 1947 would no longer exist. Clearly, this was a matter for the CONTRACTING PARTIES to GATT 1947 to deal with. The Sub-Committee could, however, invite the CONTRACTING PARTIES to consider this matter, which would simplify the transitional arrangements that one might envisage and might bring some pressure to bear and encourage governments to ratify more rapidly the WTO Agreement.

31. The representative of Hong Kong said that the documents recently circulated offered a good basis to at least start the analysis on what was a very difficult and urgent issue. His delegation hoped to contribute to the substantive debate in due course, and suggested that one aim for a formula that had neutrality as one of the essential elements and was effective. Hong Kong believed that there should be no disincentive to joining the WTO early. It was important that one should not be seen to be delaying the process in any way, and also to try and find a formula that was simple to administer, although that might not be so easy to achieve given the issues raised in the Secretariat paper.

32. The representative of Australia said that consideration needed to be given to the issue of withdrawal from the GATT 1947, although this was rather a late stage to begin such consideration. Furthermore, more attention needed to be given to what one meant by the term "transitional period", in that there were a number of key time periods, such as the period for least-developed countries to submit schedules, the period for pre-existing disputes to run their course, and so on.

33. The Sub-Committee took note of the statements.

D. Paragraph 8(c)(iv) of the Decision establishing the Preparatory Committee
(Composition of the Textiles Monitoring Body)

34. The Chairman recalled that the Sub-Committee had postponed consideration of this subject earlier. However, he believed it was time to take it up in due course. In the meantime, he welcomed members' views on how to proceed, bearing in mind that there would be considerable work involved in dealing with the TMB's membership and other related questions.

35. The representative of the European Communities said that the best means of dealing with this matter would be to follow the example of the establishment of the three contact groups on other areas of the Sub-Committee's work. There should be a forum in which textiles experts would be able to meet and settle problems with a view to 1 January 1995.

36. The representative of New Zealand expressed interest in the comment by the Community, and flagged the interests of small suppliers, such as New Zealand, in this question in the context of the transition from the MFA to a new régime in textiles.

37. The representative of Hong Kong echoed the Community's view that a contact group of experts might be necessary to carry the work on this difficult subject forward.

38. The Chairman, responding to the suggestions for the setting up of a body to discuss the TMB issue, said he was a little reluctant to do so given that there were already three contact groups and that many delegations, particularly the small ones, had expressed reservations to him on the multiplication of bodies. He would, therefore, hold consultations on this matter and would come back to it at the next meeting to seek advice as to how this matter could best be pursued.

39. The Sub-Committee took note of the statements.