

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

RESTRICTED

PC/M/7

30 November 1994

(94-2608)

PREPARATORY COMMITTEE FOR THE
WORLD TRADE ORGANIZATION

MINUTES OF MEETING

Held on 23 November 1994

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

2. The Chairman said that the main purpose of the present meeting was to oversee progress of work pertaining to the preparation of the Committee's report to the WTO. Before turning to this matter, he wished to recall the Committee's decision at its meeting on 25 October to hold the Implementation Conference on 8 December and to set out its provisional agenda. The convening notice for the Conference had been circulated on 11 November (PC/AIR/40, GATT/AIR/3652) and, as delegations would have noted, the agenda was specific and action-orientated and did not call for general statements or speeches. The central task of the Implementation Conference was to confirm 1 January 1995 as the date of entry into force of the WTO. This confirmation by the Preparatory Committee, acting as part of the Implementation Conference, would be based on the Committee's understanding that members were committed to bringing the WTO into force on 1 January 1995 and would be making every effort to conclude their domestic ratification processes to this end. He knew full well that that was, indeed, the case. As members were aware, paragraph 7 of the Ministerial Decision Establishing the Preparatory Committee kept the Committee in place until the entry into force of the WTO. He could already see the need for at least one more meeting of the Committee after the Implementation Conference to finalize and adopt the report to the WTO taking into account the work done in December. It went without saying that at such a meeting, the Committee would also be free to review, if necessary, the situation regarding the conclusions reached on 8 December.

3. The Committee took note of the statement.

Report of the Preparatory Committee to the WTO

4. The Chairman recalled that the Ministerial Decision Establishing the Preparatory Committee, under its paragraph 8(b)(iv), required that the Committee prepare and submit a report on its activities to the WTO. In organizing the work of the Preparatory Committee earlier in the year, the task of drafting a report for the Committee's consideration and eventual adoption had been allocated to the Sub-Committee on Institutional, Procedural and Legal Matters. A first preliminary draft report was before the Committee in document PC/R/W/1. He hoped delegations would understand the unavoidable reasons which had led to this document being made available only a few days before the present meeting, the most important of which had been the aim of providing an up-to-date and accurate picture of the situation without prejudging ongoing work and discussions under way in the various bodies.

5. The draft report was a "skeleton" which needed to be fleshed out and fine-tuned, which the Committee would be doing in the coming weeks leading up to the Implementation Conference on 8 December. The draft represented a major step forward in bringing the activities of the Preparatory

Committee to a meaningful conclusion prior to the WTO's entry into force. As to the details, two comments would be worthwhile at this stage. First, the structure and format of the report flowed naturally from the mandate of the Committee and its tasks as set out under paragraph 8 of the Ministerial Decision establishing the Committee. Second, the work accomplished in respect of individual tasks were best dealt with as a factual description together with points for the Preparatory Committee's information or decision or both. As stated by the Chairman of the Sub-Committee on Institutional, Procedural and Legal Matters in his presentation of the report to the Sub-Committee on 18 November, the report should neither duplicate, nor be a substitute for, the detailed minutes of various meetings, the records of which would remain after the entry into force of the WTO. He asked if the Chairmen of the four Sub-Committees wished to elaborate further on any points covered by the draft report and to outline the outstanding issues and the process that was under way to deal with them. Listing such issues would be particularly useful to the Committee in preparing its final report to the WTO in a timely and smooth manner.

6. Mr. Kesavapany (Singapore), Chairman of the Sub-Committee on Institutional, Procedural and Legal Matters, referring to the draft report in PC/R/W/1, expressed gratitude to the Chairmen of the other three Sub-Committees for their respective contributions to the task of preparing the draft. As the Chairman had said, the draft report would undergo considerable editing as one progressed through the outstanding issues. As to the activities of the Sub-Committee, with the approval of the terms of reference for the WTO Committees on Budget, Finance and Administration, Balance-of-Payments Restrictions, Trade and Development, Market Access and Agriculture, the Sub-Committee's work on this part of its mandate had been completed.

7. On rules of procedure for WTO Bodies, a set of rules for the Ministerial Conference, the General Council, the Trade Policy Review Body and the Dispute Settlement Body had been approved. Draft guidelines for observer status for international intergovernmental organizations had yet to be finalized. The Annex to the rules containing these guidelines had been withdrawn from the package pending the resolution of the issue of observer status for intergovernmental organizations in the DSB. Finally, it had been agreed that observer status for signatories of the Final Act which had not yet become WTO members at the time of entry into force would be dealt with through specific transitional arrangements on the nature of the participation of these governments in the WTO, instead of in the rules of procedure. The Sub-Committee had therefore completed its work on this part of its mandate also, in terms of what it had agreed to address in the time available to it. Any further work or contribution on rules of procedure by delegations, such as on rules for subsidiary bodies, would be additional to that mandate. Work had been initiated recently on a proposal by the United States regarding rules of ethical conduct in the settlement of disputes. Mr. Armstrong (New Zealand) was undertaking consultations on this matter.

8. Work was well advanced in the three Contact Groups. In the Contact Group on Agriculture, work on Sanitary and Phytosanitary Measures had been completed and work on notification requirements and formats for the WTO Committee on Agriculture should be completed by the Sub-Committee's next meeting. The Contact Group on Anti-Dumping, Subsidies and Safeguards should also be reporting in the present week. With regard to the Contact Group on TRIPS, work on TRIPS aspects had been completed, while work on TRIMs was also virtually completed.

9. On the WTO's relations with other intergovernmental organizations, several useful exchanges of views, both formal and informal, had taken place since the previous meeting of the Preparatory Committee. It had been agreed that while work, which was at different stages of advancement, could proceed normally on aspects of the WTO's relations with the international organizations which the Sub-Committee had identified as priority ones, namely the IMF, World Bank, WIPO, CCC, ISO and three agriculture-related organizations, only one aspect really needed to be dealt with before the entry into force of the WTO, which related to arrangements with the IMF with regard to the balance-of-

payments provisions in the WTO Agreement. He had requested, therefore, pending the conclusion of a more definitive arrangement with the IMF, that the Chairman of the GATT 1947 BOP Committee seek the agreement of the IMF in respect of the continuation into the following year of the arrangements currently in place with respect to GATT 1947 and the IMF, and the necessary extension thereof to balance-of-payments matters in the area of services. Separately, the Sub-Committee had found no grounds for institutional links between the WTO and the United Nations. However, the need for the establishment of cooperative ties between the two organizations had been underscored, which could be taken up by the WTO's General Council. As for UNCTAD, the need for the WTO to establish arrangements for effective cooperation at an early stage had been recognized. On the question of the interest of the non-governmental organizations in following the work of the WTO in specific areas, this would be addressed as soon as the ongoing discussion in the Sub-Committee on Trade and Environment had been concluded.

10. On transitional arrangements, several useful exchanges of views, mostly in an informal setting, had been taking place. The Sub-Committee would present proposals for consideration by the Preparatory Committee at an appropriate time sufficiently in advance of the Implementation Conference.

11. On issues relating to the Standing Appellate Body, a great deal of progress had been made and the Sub-Committee should be in a position to propose detailed recommendations for consideration by the Preparatory Committee soon. There was near unanimity of views on the setting up of this very important body. Together with the rules of ethical conduct that were being drafted, the Preparatory Committee had made a vital contribution in ensuring that the WTO would be treated with the respect and credibility that it would require to carry out its functions. As for the Textiles Monitoring Body, the Contact Group established to examine the composition of the TMB should be reporting to the Sub-Committee the following week.

12. Finally, he asked if the Chairman could give some consideration to an issue that had been brought to his attention by both delegations and the Secretariat, namely that of the derestriction of the Preparatory Committee's documentation. After the self-extinction of the Committee upon entry into force of the WTO, there would be no formal body left to decide on this issue, which, moreover, did not appear to be within the mandate of the Sub-Committee on Institutional, Procedural and Legal Matters. He suggested that the Preparatory Committee take a decision, as a routine matter, prior to or at its last meeting, on the derestriction of its documents, similar to the decision taken by the Uruguay Round Trade Negotiations Committee, without discussion, before the Marrakesh Ministerial Meeting (MTN.TNC/W/138). While that decision had not yet been acted upon for lack of time, the legal basis existed for implementing it. The same approach for the Preparatory Committee's documentation could be envisaged.

13. The Chairman said that he would propose a draft decision at the next Preparatory Committee meeting, based, *mutatis mutandis*, on the TNC decision in MTN.TNC/42.

14. Mr. Szepesi (Hungary), Chairman of the Sub-Committee on Budget, Finance and Administration, said that the Sub-Committee had met twice since his last report to the Committee. In addition, a number of formal meetings and informal consultations had taken place, in particular in a working group the composition of which corresponded broadly to that of the GATT 1947 Committee on Budget, Finance and Administration and which was operating under the Chairmanship of Mr. Gosselin (Canada). With regard to the Management Review, the Sub-Committee had, as agreed, received regular oral progress reports from the consultants. At the meeting of the Sub-Committee held the day before, the consultants had made a detailed oral presentation on what they saw as their major conclusions and most important draft recommendations. It was his understanding that the consultants, while still working on some of the analysis and supportive argumentation with a view to finalizing their report, would be available to meet with interested Members of the Sub-Committee and to listen to the specific points Members

might wish to raise with respect to different elements of the conclusions and recommendations of the draft report. The next, and, at the same time, the final step in this process would be the submission of the final report, scheduled for 15 December.

15. With regard to the negotiations of a Headquarters Agreement with the Swiss authorities, the team negotiating on behalf of the Preparatory Committee had made detailed progress reports to the Sub-Committee. These reports had covered all main aspects of the ongoing negotiations, namely the building and other physical facilities to be provided to the WTO, the accommodation for least-developed country Members, as well as the broad chapter of immunities and privileges. It was a general perception that while discussions on the different aspects of the physical facilities were progressing quite well, a lot of work remained to be done in the field of privileges and immunities to be afforded to Permanent Missions, to the WTO itself and to their respective staff. In this context, direct and indirect taxation, work permits and residence permits were issues on which progress, if any, seemed to be extremely slow. It was clear to both sides that nothing would be agreed unless a mutually satisfactory agreement could be reached on all the issues concerned. Although both sides would do whatever they could to achieve substantial progress, he did not exclude the possibility, as matters now stood, that it might be necessary to envisage the continuation of the negotiations into the early part of 1995 before a satisfactory overall package could be finalized.

16. With regard to the 1995 budget, a recommendation from the working group he had referred to had been addressed to the Sub-Committee and would be considered the following week before asking for the endorsement of the Preparatory Committee. The same recommendation would hopefully be approved by the forthcoming annual Session of the CONTRACTING PARTIES to the GATT 1947 as well.

17. With regard to the other issues in the Sub-Committee's mandate, a first examination had already taken place in the working group. Regarding the transfer of assets and liabilities from ICITO/GATT to the WTO, further to an exchange of views in the working group, the Secretariat had prepared a document that would be examined by the Sub-Committee early the following week. The same applied to the relationship between the ITC and the WTO as well as to the future financial regulations of the WTO. With regard to guidelines for budget contributions by Members of the WTO, he recalled that the Preparatory Committee had already agreed that, in principle, the assessment should reflect shares in international trade in goods, services and intellectual property, but that, pending further study, the calculation of assessments for the 1995 budget of the WTO should follow existing practices under the GATT 1947. Changes to reflect the decision of the Preparatory Committee would be introduced no later than one year after the creation of the WTO. On the issues of contract of employment policy and salaries and pensions, it seemed that these matters would have to be discussed further at a later stage, as a package, taking also into account the conclusions of the Management Review. If this approach were to be adopted, some transitional arrangements might become necessary regarding the contract policy, and it was his expectation that the Sub-Committee would also address this issue at its next meeting. As this brief overview indicated, while a number of issues were still waiting for finalization and action in the Sub-Committee, the bulk of the work could hopefully be accomplished prior to the next meeting of the Preparatory Committee.

18. Mr. Manhusen (Sweden), Chairman of the Sub-Committee on Services, said that since his last report to the Preparatory Committee, the Sub-Committee had held its fourth meeting at which it had reviewed progress in on-going negotiations on Basic Telecommunications, Maritime Transport, Movement of Natural Persons and Financial Services. It had also discussed outstanding issues relating to the scope of the GATS and a revised version of the draft Guidelines for Notifications. At that meeting, he had also made a statement concerning the verification of services schedules drawing the attention of Members of the Sub-Committee to the three schedules submitted to the Preparatory Committee by St. Kitts and Nevis, the United Arab Emirates and Mali. While the approval of such schedules was a matter for

the Preparatory Committee, the verification of their technical accuracy and legal consistency had to be done by the Sub-Committee. The Negotiating Group on Movement of Natural Persons had held its third meeting on 4 November, the main purpose of which had been to provide transparency on progress made in bilateral negotiations. At this stage, the outstanding work before the Sub-Committee could be summarized as follows: (a) the draft Guidelines for Notifications, which had been revised on the basis of discussions in the Sub-Committee, were expected to be finalized at the Sub-Committee's next meeting on 29 November and subsequently issued as a formal document of the Sub-Committee; (b) the verification of the three schedules he had referred to, as well as of others that might be submitted before the end of the year. To expedite that process, the Secretariat had circulated a note inviting delegations to communicate to it any technical questions they wished to raise in relation to those three schedules. At its meeting on 29 November, the Sub-Committee would take up this question, including the organizational arrangements for the remainder of the verification process; and (c) issues relating to the scope of the GATS. He recalled that the deadline set in the Uruguay Round Group of Negotiations on Services for the process of consultations on this issue was 15 December 1994. Since divergences still existed between Members on certain points, it was expected that consultations would have to continue beyond the Sub-Committee meeting on 29 November. Therefore, there would probably be a need to convene another meeting of the Sub-Committee before 15 December to consider a final report to the Council for Trade in Services.

19. Mr. Lampreia (Brazil), Chairman of the Sub-Committee on Trade and Environment, said that delegations had recognized early in the Sub-Committee's work that the Ministerial work programme on trade and environment was a continuum which would extend well beyond the life of the Preparatory Committee and would be taken up shortly by the WTO Committee on Trade and Environment. At its meeting to be held that afternoon and the following day, the Sub-Committee would take up, for the first time, the third of the three items of its work programme that had been agreed upon for initial focus, namely, the effect of environmental measures on market access, especially in relation to developing countries, in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions. The other two items of its work programme had already been the subject of discussions at earlier meetings of the Sub-Committee, and he had provided brief reports to the Preparatory Committee on those discussions. Work on all three items of the work programme would need to continue in 1995, under the authority of the WTO Committee on Trade and Environment, since there had only been a preliminary analysis of these items thus far. In addition, members of the Sub-Committee had agreed on the need to take up early in the new year work on a fourth item, namely, the issue of exports of domestically prohibited goods. Finally, he had been holding informal consultations on the basis of the invitation from Ministers in Marrakesh to the Sub-Committee to provide input to the relevant bodies in respect of appropriate arrangements for relations with inter-governmental and non-governmental organizations referred to in Article V of the WTO Agreement. His consultations had not yet been finalized. However, he believed that progress was being made, and at the appropriate time he would consult with the Sub-Committee on Trade and Environment formally on this issue and subsequently bring the matter back for the attention of the Preparatory Committee.

20. The Chairman said that the Committee now had before it both its draft report and a comprehensive listing of the outstanding issues under its mandate. Since discussion or comments would be premature at this stage, he proposed that the Committee take note of the draft report and of the outstanding issues as described by the Chairmen of the four Sub-Committees. He also proposed that the Committee agree that it would continue to oversee the evolution of the draft report in the light of further work and aim at having before it a more comprehensive draft for consideration at its meeting scheduled for 5 December. Before that date, however, it might be necessary for the Committee to take stock of results achieved on certain issues, particularly those in the Sub-Committees on Budget, Finance and Administration and on Institutional, Procedural and Legal Matters. As further time was needed by the Chairmen to conduct work in these areas, he proposed that the Preparatory Committee meet also on 30 November.

21. The Committee took note of the statements and agreed with the approach proposed by the Chairman.

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

22. The Chairman said that since the 25 October meeting of the Committee, four schedules on goods – namely those of Burkina Faso, Mali, Tanzania and Uganda – had been deemed to have been verified under the process agreed by the Committee in May. Accordingly, he proposed that the Committee approve the schedules on goods of the above mentioned participants.

23. The Committee so agreed.

24. The Chairman said that with regard to the few outstanding schedules on goods and services, he could only urge the participants concerned to act quickly. It was particularly worrying that there were still governments that had not submitted schedules. With respect to the others that were in the middle of negotiations, he would ask that their trading partners extend all possible cooperation in concluding the process in a timely manner. The Secretariat continued to do all it could in this area. Work was also continuing in a number of Working Parties on Accession to the GATT 1947 or, as in the case of Slovenia, to the WTO. He would be in a position to report more at a later stage on progress being made in these Working Parties when the picture was clearer. In this context, he recalled that at the Committee's meeting on 27 June, he had informed Members that consultations were being conducted by the Chairman of the GATT 1947 Council regarding the general question of the management of access negotiations that had been raised by the Nordic countries. He informed the Committee that, on the basis of consultations, the Chairman of the GATT 1947 Council had made a statement to the Council on 10 November which had been taken note of. As desired by the Council, the text of the statement had been circulated to Members of the Committee for their information (PC/2). He proposed that the Preparatory Committee take note of the information in document PC/2.

25. The Committee took note of the statement and so agreed.