

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

RESTRICTED
PC/M/8
15 December 1994

(94-2798)

PREPARATORY COMMITTEE FOR THE
WORLD TRADE ORGANIZATION

MINUTES OF MEETING

Held on 30 November 1994

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

A. Review of work under the Sub-Committees

2. The Chairman recalled that at the 23 November meeting of the Committee, the Chairmen of the Sub-Committees had presented comprehensive oral reports on areas of work under their charge. They had also listed the questions that remained outstanding and the processes and time-tables they had established for addressing them. He invited the Chairmen to inform the Committee of developments since 23 November.

3. Mr. Szepesi (Hungary), Chairman of the Sub-Committee on Budget, Finance and Administration, said that the Sub-Committee had not met since the previous meeting of the Preparatory Committee. However, the Working Group under the Sub-Committee had met on 25 and 29 November, at which the following issues, in particular, had been considered: transfer of the assets, liabilities, records, staff, and functions of the Director-General, from the ICITO/GATT to the WTO; personnel aspects of the transition from the GATT Secretariat to the WTO Secretariat; financial rules and regulations for the WTO; and the relationship between the ITC and the WTO. From the discussion of these issues, proposals were emerging for consideration in the Sub-Committee that would hopefully lead to recommendations to the Preparatory Committee, including a recommendation on the 1995 Budget. However, if the Sub-Committee was not in a position to make recommendations on some of these issues before the end of the year, it would propose that these be taken over by the relevant WTO bodies early in 1995.

4. With regard to the negotiations on the WTO Headquarters Agreement, he recalled that work was being carried out on three different fronts, namely, the physical facilities, the facilities for the least-developed country Members, and the complex issue of privileges and immunities. With regard to the physical facilities, progress had been made on most of the technical aspects. Perhaps the most important element for which an answer from the Swiss authorities was still awaited concerned a commitment for the long-term accommodation of the WTO, if and when the Centre William Rappard became inadequate. As regards the possible division of the new conference room into two smaller rooms of some 300 seats, the car parks and maintenance costs, one could detect from the Swiss delegation a wish to take care of the concerns raised. With regard to the accommodation to be provided to least-developed country Members, the positions of the two sides were still substantially different. Further informal meetings had been scheduled, and a reasonable compromise would hopefully be reached. As to privileges and immunities, progress remained slow and limited. A revised draft headquarters agreement had been submitted by the Swiss authorities. Although the changes had addressed some

of the issues raised by the team negotiating on behalf of the Preparatory Committee, they had generally fallen short of its proposals and expectations. Detailed replies were still awaited from the Swiss authorities on some of the major sticking points, namely taxation, residence permits and work permits. On the latter point, the Swiss authorities had provided some further information, which, however, had served only to confirm their previous position. Discussions would continue once the outstanding replies had been received, and it was hoped that some convergence of positions would then begin to appear. It was clear that considerable work remained to be done on the Headquarters issue. In the coming days, expert level meetings would be held which would be followed by a plenary negotiating session scheduled for 15 December.

5. Mr. Kesavapany (Singapore), Chairman of the Sub-Committee on Institutional, Procedural and Legal Matters, said that at a meeting held on 28 November, the Sub-Committee had approved three reports on notification formats and procedures submitted by the Contact Groups on Agriculture, on Anti-dumping, Subsidies and Safeguards, and on TRIPS with respect to TRIMs. With this, the Sub-Committee had completed work on the part of its mandate relating to terms of reference and rules of procedure. This meant, in effect, that the WTO and its main organs would be ready to start work on 1 January 1995, if, as all hoped, the WTO entered into force on that date. Consultations were ongoing on proposed rules of ethical conduct in the settlement of disputes. Mr. Armstrong (New Zealand) planned to advance work to the greatest extent possible. As regards the Appellate Body, agreement had been reached the night before, at the drafting group level, on all aspects related to its establishment. A paper reflecting this agreement would be submitted to the next meeting of the Sub-Committee.

6. On the WTO's relations with the IMF, the Sub-Committee had approved the draft of a letter to be sent by the Chairman of the GATT 1947 Committee on Balance-of-Payment Restrictions to the appropriate authority at the IMF. Pending the conclusion of a more definitive arrangement regarding the WTO's relations with the IMF, this interim arrangement would ensure that the working relationship currently in place between the GATT 1947 and the IMF would continue into 1995 and be extended to balance-of-payments matters in the area of services.

7. The Sub-Committee had two outstanding issues before it. The first was the important and pressing issue of transitional arrangements. Intensive bilateral and plurilateral meetings would be held over the next few days, and their outcome would be reported to the Sub-Committee and consequently to the Preparatory Committee. The second was the question of composition of the Textiles Monitoring Body. The Chairman of the Contact Group established to examine this matter had indicated that he would intensify his consultations over the next few days. Depending on the outcome of these consultations, the question of proceeding further on this matter would be addressed. This would also take into account the question of the Chairmanship of the TMB. A meeting of the Sub-Committee to be convened at short notice might be necessary to consider proposals on the two outstanding issues, as well as on any other matters as necessary.

8. The Chairman said that, as members were aware, the Sub-Committees on Trade and Environment and on Services were somewhat different in that their mandates and work programmes extended beyond the life-time of the Preparatory Committee. However, in the context of updating the draft report to the WTO, it would be appropriate for the Chairmen of these Sub-Committees to provide information regarding developments since 23 November.

9. Mr. Lampreia (Brazil), Chairman of the Sub-Committee on Trade and Environment, said that since he had reported last to the Preparatory Committee, the Sub-Committee had held a further meeting, at which the focus of attention had been the sixth item of the Ministerial work programme on trade and environment, namely the effect of environmental measures on market access, especially in relation to developing countries and in particular to the least developed among them, and environmental benefits of removing trade restrictions and distortions. Delegations had highlighted for further examination

issues such as the effects of tariff escalation, non-tariff barriers and trade-distorting subsidies on the environment, export diversification and its relationship to environmental protection, market opportunities for environmentally friendly products particularly from developing countries, and the importance of technology transfer and technical and financial assistance in the pursuit of sustainable development. Many delegations had noted that this was a cross-cutting issue related to other items of the work programme, including transparency and charges, taxes and product requirements which served environmental purposes. Several delegations had also found it appropriate to revert to two other items of the work programme which had been selected for initial focus, in particular the item dealing, *inter alia*, with the use of trade measures pursuant to multilateral environmental agreements.

10. Since this had been the final scheduled meeting of the Sub-Committee, he wished to say that, in his view, an impressive start to the Ministerial work programme on trade and environment had been made. The issues had been taken up substantively, a great deal of effort had been invested by delegations in the work programme, both in Geneva and in capitals, and there was a clear commitment across the board to making the maximum progress possible before the first biennial meeting of the Ministerial Conference after the entry into force of the WTO, when the work and terms of reference of the WTO Committee on Trade and Environment would be reviewed in the light of the Committee's recommendations. The work of the Committee over the following two years held out great promise for meeting the objective of ensuring that policies in the field of trade and environment were properly coordinated.

11. Finally, he was still consulting informally on the possible input that the Sub-Committee could provide to the Preparatory Committee in respect of appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in Article V of the WTO Agreement. He hoped to be able to conclude these consultations successfully in the very near future, in which case he would convene a short meeting of the Sub-Committee to endorse the results of his consultations and have them forwarded to the Preparatory Committee.

12. Mr. Manhusen (Sweden), Chairman of the Sub-Committee on Services, said that the Sub-Committee had held its fifth meeting on 29 November. It had finalized draft guidelines for notifications under the GATS, which would now be issued as a formal document of the Sub-Committee and transmitted to the Council for Trade in Services for its consideration and approval. Also, he had reported to the Sub-Committee on informal consultations he had held on the outstanding issues relating to the scope of the GATS. The Sub-Committee had also discussed the question of verification of schedules of commitments. In this regard, he had drawn attention to Angola's schedule of commitments, which had recently been circulated to Members of the Preparatory Committee. It had been agreed to hold an informal meeting on 15 December for the verification of schedules, to be followed by the final formal meeting of the Sub-Committee on 16 December.

13. The outstanding work of the Sub-Committee consisted of two main items. The first was the outstanding issues relating to the scope of the GATS. There were still divergences among Members on certain points, and he would continue his informal consultations on those issues with a view to reaching solutions acceptable to all Members, keeping in mind that the deadline for this work was 15 December. The second item was the verification of schedules. Thus far, four schedules of commitments in services had been circulated to Members of the Preparatory Committee, namely those of St. Kitts and Nevis, the United Arab Emirates, Mali and Angola. With regard to the verification of these schedules, he drew attention to a potential timing problem. According to the procedures agreed by the Preparatory Committee, the verification of services schedules had to follow the conclusion of bilateral negotiations between Members of the Preparatory Committee and the government concerned. At the meeting of the Sub-Committee on 29 November, some Members had indicated that negotiations on the schedules had not yet been concluded and that more time was needed. The process of verification, therefore, could not be started. He underlined that if the governments concerned were to become original

members of the WTO, negotiations on these schedules should be concluded and the schedules verified by the Sub-Committee and approved by the Preparatory Committee before the latter concluded its work at the end of the year. That would require that all bilateral negotiations on these schedules be concluded by 15 December, which was the date set by the Sub-Committee for the verification of schedules.

14. The Chairman said that, with regard to work under paragraph 8(b)(i) of the Decision establishing the Preparatory Committee, the schedules on goods of Angola and Grenada had been received and Members duly informed. Also, Angola's schedule on services has been circulated in document PC/W/10. He hoped that negotiations were continuing on the other pending schedules, and believed that with the requisite goodwill, it should be possible to conclude the process under paragraph 8(b)(i) by mid-December.

15. The representative of Qatar, referring to the remarks concerning the pending schedules on goods and services from a number of countries, said that his delegation had been in contact with the Secretariat's Technical Cooperation Division, and hoped to complete work on Qatar's schedules very shortly. He hoped that these schedules would be circulated to Members and verified as rapidly as possible.

16. The Chairman welcomed the positive indication from Qatar. He proposed that the Committee take note of the progress reports by the Chairmen of the Sub-Committees. In respect of outstanding areas of work, he proposed that the Committee take note of the conclusions and agreements reached on specific questions as reported at the present meeting, with the understanding that they would be incorporated, in appropriate textual form, into the first revision of the draft report to the WTO which would be available to the Preparatory Committee at its next meeting.

17. The Committee so agreed and took note of the statements.

18. The Chairman stressed that there was still a great deal of work to be done and very little time in which to do it. In the coming days, he would be working closely with the Chairmen of the Sub-Committees to resolve as many pending issues as possible. He urged delegations to accelerate work in the period between then and 7 December. As all were aware, it was vital that the Implementation Conference be in a position to adopt a number of key decisions on 8 December as a result of work done in the Sub-Committees on Budget, Finance and Administration and on Institutional, Procedural and Legal Matters. The pending issue of transitional arrangements was a case in point. A clear picture in respect of these decisions should, therefore, emerge at the next meeting of the Committee, when the Chairmen concerned reported on results of work done since the present meeting.

B. Derestriction of documents

19. The Chairman recalled that at the Committee's meeting on 23 November, the Chairman of the Sub-Committee on Institutional, Procedural and Legal Matters had suggested that the Committee consider the possibility of adopting a decision to provide for the future derestriction of its documents and those of its subsidiary bodies, similar to that taken by the Uruguay Round Trade Negotiations Committee prior to the Marrakesh Ministerial Meeting (MTN.TNC/42). In response, he had said that he would submit a draft decision to this effect at the present meeting. Members would have received this draft decision in document PC/W/9, the text of which was an adaptation of the earlier TNC decision to adjust to the current situation. He proposed that the Committee adopt the draft decision in PC/W/9.

20. The Committee so agreed (PC/4).

C. Ratification

21. The representative of Egypt said that as one approached the implementation of the WTO Agreement, Egypt hoped to see a large number of countries ratifying the Agreement. He enquired as to the present situation with regard to ratification.

22. The Chairman said that thirty-six governments had either formally ratified or completed their domestic processes in regard to ratification as of that date. On the basis of information received, there was reason to be very optimistic that the number of governments that would be in a position to accept the WTO Agreement on 1 January 1995 would be substantially greater than the figure he had just mentioned. Indeed, only a few governments had indicated that they might not be in a position to accept the WTO on that date. A virtual avalanche of ratifications was expected in the very near future, and he knew he had the support of all in trying to ensure that a very large number of governments accepted the Agreement by 1 January 1995.

23. The Committee took note of the statements.

D. Other Business

24. The representative of Korea said he wished to draw attention to Section 267 of the draft Uruguay Round Implementing Bill of the United States and the related part of the Statement of Administrative Action. Section 267 stipulated that the term "developing countries" in the Subsidies Agreement meant a country designated by the USTR, and the second last paragraph in page 270 of the Statement of Administration Action stated that the USTR would not designate Hong Kong, Korea or Singapore as developing countries. His Government was seriously concerned by this. Throughout the entire process of the Uruguay Round negotiations, from Punta del Este until Marrakesh, Korea had participated as a developing country. If the United States had wished to treat Korea otherwise, a consensus to that effect should have been reached before the conclusion of the negotiations. That, however, was clearly not the case. The Uruguay Round package reflected a balance of rights and obligations among participants, and special treatment for developing countries was part of the package. Korea had agreed to the Uruguay Round package with the legitimate expectation that it would benefit from that special treatment. Denial of those benefits through any unilateral and arbitrary determination on the part of one participant as to the status of the others was therefore not only inconsistent with the long-standing practice of "self-election", but also went against the *bona fide* nature of the negotiations. He wished to register the strong concern of his Government in this matter, and urged the United States to address Korea's concern. He reserved Korea's right under the WTO to take appropriate action, if necessary.

25. The representative of Hong Kong associated his delegation with Korea's statement. Self-election in respect of developing country status had been a long-standing practice under the GATT, which had not in any way been changed as a result of the Uruguay Round negotiations. Hong Kong, like all other parties, had completed the negotiations in good faith, and none of the agreements had provided for designation of developing- or developed-country status. Hong Kong was concerned that if the provision in the implementing Bill referred to by Korea was enacted in its present form, Hong Kong's rights under the Subsidies Agreement would be impaired. More importantly, the principle of self-election would have been disregarded and thus seriously undermined. Hong Kong was also concerned that such a unilateral designation by the United States could be extended to other areas covered by the WTO Agreement and that this could create an undesirable precedent. There was an apparent self-serving nature to this exercise. While the three countries concerned were evidently to be considered as developed in the context of subsidies, no one had yet suggested that Hong Kong, Korea and Singapore were developed countries in the context of trade in textiles. It was well known that restrictions on trade in textiles were not applied between developed economies. The fact that such restrictions continued

to be applied to Hong Kong's exports presumably meant that the United States still regarded Hong Kong as developing in that context. He urged the United States to address his Government's concerns as a matter of urgency. Hong Kong reserved its rights under the WTO Agreement to take appropriate action to restore the carefully negotiated balance of rights and obligations if this were upset by the proposed legislation.

26. The representative of Singapore said that the provisions in the United States' proposed implementing legislation went against the spirit and letter of the Uruguay Round Agreement. These provisions had been included even though the United States recognized that the designation of developing-country status in the GATT/WTO was by the process of self-election. The United States' justification for this action was the self-serving argument that using self-election in the context of countervailing duty proceedings was inappropriate given the unacceptable risk of abuse. The WTO Agreement was a multilaterally negotiated agreement of rights and obligations. Neither the United States, nor any other government, could arbitrarily impose its unilateral interpretations of what constituted a correct balance of rights and obligations under that Agreement. Singapore had negotiated the WTO Agreement as a developing country and therefore had justifiable expectations to be able to invoke the provisions available to developing countries therein. Singapore would honour all its commitments under the Uruguay Round, and expected its trading partners to do the same. Singapore reserved the right, under the WTO Agreement, to take any necessary action to redress any impairment of its rights that might result from the United States' proposed legislation.

27. The representative of Malaysia, speaking on behalf of Informal Group of developing countries, recalled his statement at the meeting of the Uruguay Round Trade Negotiations Committee on 15 December 1993, upon the successful conclusion of the Uruguay Round, that: "Developed countries, therefore, have a commitment to ensure that the rules of the playing field are observed, and most important of all, that we play fair, and that the rules are not subject to arbitrary or unilateral interpretations to suit circumstances. Towards this end, the developing countries are putting their hopes and aspirations in the new organization as well as in the new rules and disciplines." That had summed up the developing countries' expressions of hope, expectation and, of course, anticipation of a more certain future in the environment of international trade. From the recent developments, as indicated by Korea, Hong Kong and Singapore, one would not be able to achieve that situation of certainty. The provisions referred to in the United States' draft implementing legislation, together with the Statement of Administrative Action, pointed towards unilateralism and the creation of uncertainties for the developing country status of countries which had all along participated in the negotiation of the Uruguay Round package - and hence the rights and obligations - on the basis of such status. Some had undertaken more obligations commensurate with their levels of economic development. It was therefore unfair and disheartening that the rules of the game were changed midstream, and unilaterally, for some developing countries, thereby effectively undermining the rights and obligations negotiated under the Uruguay Round. Without doubt, neither the GATT nor the WTO Agreement had any provision for the designation of developing-country status, and the long-standing practice and spirit in the GATT had always been to rely on self-election by the party concerned. Clearly, this long established practice has neither been negotiated, nor modified, in the Uruguay Round. In fact, the entire Uruguay Round package had been agreed with this established practice in the background. The issue raised by Korea, Hong Kong and Singapore was pertinent to the implementation of the results of the Round, and had ramifications for the multilateral trading system. Such actions, which had the effect of, either directly or indirectly, disturbing the overall balance of rights and obligations contained in the Uruguay Round Final Act, were best avoided. He hoped that the United States would give serious consideration to this issue and contribute to a successful Implementation Conference, to be held in less than ten days' time.

28. The representative of Brunei Darussalam, speaking on behalf of the ASEAN countries, expressed the support of the ASEAN countries as a group for the statements by Korea, Hong Kong, Singapore

and Malaysia. The unilateral designation of developing-country status by the United States was inconsistent with the GATT practice of self-election. If unchecked, such unilateral designation could be extended to other areas of the WTO Agreement, and would encourage similar action by other countries. The United States' action was tantamount to a unilateral and arbitrary determination of the "correct" balance of rights and obligations among the parties of the WTO Agreement, and was unacceptable in a multilaterally-negotiated agreement. Finally, with the WTO expected to come into force in the coming weeks, the ASEAN countries joined the previous speakers in urging the United States to take appropriate action to rectify the situation.

29. The representative of Brazil said that although Malaysia had spoken in the name of developing countries, he was taking the floor in case it was considered that this matter was of concern only to Asian countries since they had been the only ones to speak thus far. He underlined that this matter was of great concern also to Brazil. Self-election was a basic notion as far as the labelling of a country as developed or developing was concerned. It had always been so, and to change this would be to tamper with a very important operational principle in the GATT/WTO. More generally, to change the rules *a posteriori* constituted a dangerous precedent which should not be encouraged. There were a number of areas in which this could be done, and it would be to the detriment of the system as a whole if this practice were started by any country. Furthermore, countries that had negotiated in good faith should not have their commitments and their expectations frustrated by decisions taken on a unilateral basis. The balance of the negotiations in the Uruguay Round Agreement could not be accepted on this basis. If this were allowed to happen, an essential pillar of the system would be damaged, which would be dangerous. Brazil therefore supported the previous speakers' statements.

30. The representative of China supported the previous speakers' statements, in particular those of Malaysia, Egypt and Brazil.

31. The representative of Mexico shared the views expressed by Malaysia, as well as those of others to the effect that the system of self-election applied in the GATT should be maintained. Many of the issues that were part of the overall Uruguay Round package and which formed part of special and differential treatment had been accepted precisely because they had permitted a balance to be achieved in the results which had obtained an overall consensus. To attempt to change that balance at this time would be inappropriate. Any change that might come about in the future as a result of consideration at the multilateral level would also apply in the future rather than retroactively in any way.

32. The representative of Bangladesh associated his delegation with the statement by Malaysia.

33. The Committee took note of the statements.