

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

RESTRICTED

PC/M/9

16 December 1994

(94-2814)

PREPARATORY COMMITTEE FOR THE
WORLD TRADE ORGANIZATION

MINUTES OF MEETING

Held on 7 December 1994

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

A. Review of work under the Sub-Committees

2. Mr. Szepesi (Hungary), Chairman of the Sub-Committee on Budget, Finance and Administration, recalled that the Sub-Committee had been mandated to prepare recommendations to the Preparatory Committee on six issues: (a) the Headquarters Agreement to be negotiated with the authorities of the host country; (b) financial regulations including guidelines for the assessment of WTO members' budget contributions; (c) the budget estimates for 1995; (d) the transfer of assets and liabilities of the ICITO/GATT to the WTO; (e) the transfer and terms and conditions of the transfer of the GATT staff to the WTO Secretariat; and (f), the relationship between the International Trade Centre and the WTO.

3. With regard to the Headquarters Agreement, he had made regular reports to the Committee on developments related to the negotiations conducted on behalf of the Preparatory Committee with the Swiss authorities. The negotiating team continued to be guided by the Committee's view that a good mutually satisfactory agreement was better than a hastily concluded one which might leave in the shadow some important aspects. While every effort would be made to speed up the negotiations, it appeared that this would require a number of decisions which should be taken at the political level by the Swiss authorities. The negotiations would have to be pursued until a global proposal could be submitted to the Preparatory Committee or to the General Council of the WTO.

4. With regard to financial regulations, the Sub-Committee recommended that the Secretariat be entrusted with the task of preparing the draft Financial Rules and Regulations for the WTO based on GATT practice, so that they could be submitted for approval to the General Council of the WTO early in 1995. Pending this approval, the present GATT practice should be maintained. With regard to guidelines for budget contributions by WTO Members, the Sub-Committee had agreed that, in principle, the assessments 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 practice under the GATT 1947. Changes to reflect the above-mentioned decision would be introduced no later than one year after the creation of the WTO. As regards the budget estimates for the first year of operation of the WTO, the Sub-Committee recommended that the Preparatory Committee approve the Budget Estimates contained in PC/W/8, W.50/11 and Corr.1 and 2. The 1995 budget amounted to SwF 105,389,500, and the contributions assessed on Members/contracting parties represented SwF 104,400,000. The relevant proposals were contained in paragraph 15 on page 4,

paragraph 6 on page 12 and paragraph 21 on page 13 of the document, and would also be submitted for approval to the CONTRACTING PARTIES to GATT 1947 at their Fiftieth Session.

5. As regards the transfer of property, including the financial assets of the ICITO/GATT to the WTO, the Sub-Committee recommended that the Preparatory Committee approve an agreement between the Preparatory Committee, the Interim Commission for the International Trade Organization (ICITO) and the CONTRACTING PARTIES to GATT 1947 to transfer all assets and liabilities other than staff contracts, from ICITO and the GATT 1947 CONTRACTING PARTIES to the WTO (PC/W/12, 6SS/W/1). With regard to the transfer, and the terms and conditions thereof, of the GATT staff to the WTO Secretariat, the Sub-Committee recommended that with effect from the entry into force of the WTO Agreement, as a transitional arrangement, the ICITO provide Secretariat services for the WTO on a reimbursable basis. The Sub-Committee further recommended that, pending agreement by the WTO's General Council on the rules and regulations for the WTO staff, existing ICITO terms and conditions of service for staff apply. It was also recommended that, for the sake of legal certainty, the decisions of the Preparatory Committee concerning all the transfers be endorsed in due course by the WTO's General Council.

6. The question of the future relationship between the International Trade Centre and the WTO had been examined by a Working Group established under the Sub-Committee and the GATT 1947 Committee on Budget, Finance and Administration. The Working Group had concluded that the matter should be further discussed, and the Sub-Committee recommended that all aspects of the future relationship between ITC and the WTO should be taken up, discussed and decided upon by the relevant WTO bodies early in 1995.

7. On another matter, he recalled that on 22 July, the Preparatory Committee had mandated the Sub-Committee to decide on matters relating to the organizational structure, including a management review. The creation of 21 additional posts for 1994 had been decided, and a Management Review had been entrusted to outside consultants who would submit their final report on 15 December. This report, and the suggestions therein, would be forwarded to the relevant WTO bodies for consideration and action, as appropriate. With regard to other staff-related matters, namely, salary scales, the pension scheme, the contract of employment policy, and the staff rules, these formed a package which the Sub-Committee recommended be examined by the relevant WTO bodies as soon as possible in 1995, in the light of, *inter alia*, the suggestions of the consultants on the management review.

8. The Sub-Committee had been considering two other administrative issues. The first concerned administrative measures for Members with three years or more of unpaid contributions, and proposed measures had been set out in paragraph 7(a), (b), (d) and (e) of document PC/W/13, W.50/20. The Sub-Committee recommended their approval by the Preparatory Committee. With regard to the financial implications mentioned in paragraph 7(c) and (f), these required further consultation and should be considered in 1995 by the relevant WTO bodies. The second issue related to the financial obligations of States and separate customs territories that were observers to the WTO. The Sub-Committee recommended that the Preparatory Committee approve paragraph 4 of document PC/W/14, W.50/21 with the following addition: "These financial obligations will not apply to the States or separate customs territories which are GATT 1947 contracting parties in the process of ratification of the WTO Agreement, but which have not yet become Members".

9. In conclusion, the Sub-Committee would have to meet again before the end of the year to receive the report of the consultants on the management review, and to take stock of developments in the negotiations with the Swiss authorities on the Headquarters Agreement. Another issue on which the Sub-Committee was not in a position to make a recommendation to the Preparatory Committee concerned the logo for the WTO. The sketches tentatively retained by the Working Group which dealt with this matter could not be formally approved for a number of reasons. Accordingly, the Sub-Committee

proposed that this issue be re-examined in 1995 by the relevant WTO body, and suggested that an adequate procedure be set up which might include a call for tenders.

10. Mr. Kesavapany (Singapore), Chairman of the Sub-Committee on Institutional, Procedural and Legal Matters, said that since the meeting of the Preparatory Committee on 30 November, the Sub-Committee had agreed on guidelines for the appointment of officers to WTO bodies (PC/IPL/14). The Chairman of the CONTRACTING PARTIES had provided clarifications with respect to some aspects of the guidelines, which would be reflected in the minutes of the Sub-Committee's meeting. He wished to add that for the WTO bodies in Groups 1, 2, 4 and 5 in the Annex to PC/IPL/14, the outgoing Chairman of the CONTRACTING PARTIES to GATT 1947 would conduct consultations and propose nominations to the first meeting of the WTO's General Council. The Sub-Committee had also agreed on recommendations regarding the establishment of the Appellate Body (PC/IPL/13). On the related matter of rules of ethical conduct in dispute settlement, work was continuing satisfactorily. As he had stated on other occasions, the objective was to take this work as far as possible before the entry into force of the WTO. At the Sub-Committee's meeting the day before, it had also been agreed that the Preparatory Committee should recommend to the WTO's General Council that it invite as observers to its first meeting the four international organizations presently invited as observers to meetings of the Preparatory Committee and its subsidiary bodies, namely the IMF, World Bank, UN and UNCTAD, pending the adoption of guidelines on observer status for international intergovernmental organizations. With regard to transitional arrangements, the Sub-Committee had agreed on the elements of a package. At its meeting the day before, the Sub-Committee had considered two decisions to be taken by the Preparatory Committee at the Implementation Conference. The first related to the participation in meetings of WTO bodies by certain signatories of the Final Act eligible to become original members of the WTO (PC/W/15, 6SS/W/4) and the second concerned the avoidance of procedural and institutional duplication (PC/W/16, 6SS/W/3). Another element of the package was a draft decision on transitional coexistence of the GATT 1947 and the WTO Agreement, contained in non-paper number 3044. In essence, that decision stated that the legal instruments through which the contracting parties applied the GATT 1947 would be terminated one year after the date of entry into force of the WTO. The last element of the package related to the Tokyo Round Codes, and in particular to the dispute settlement processes thereunder. A Working Group, co-chaired by the respective Chairmen of the Committees on Anti-Dumping Practices and on Subsidies and Countervailing Measures, had been examining this matter.

11. Mr. Graça Lima, Chairman of the Committee on Anti-Dumping Practices, said that the Committees on Anti-Dumping Practices and on Subsidies and Countervailing Measures had met jointly and informally a number of times over the past few weeks in order to consider, pursuant to the Marrakesh Ministerial Decision on the Application and Review of the Understanding on Rules and Procedures Governing the Settlement of Disputes, a draft decision on withdrawal from the Tokyo Round Agreements and a complementary draft decision on transitional coexistence. As a result of the relation of these draft decisions to the process initiated under the Sub-Committee on Institutional, Procedural and Legal Matters, determined efforts had been made to complete this task before the present meeting of the Preparatory Committee. Following recommendations made that morning, the Working Group had met in the afternoon to examine the drafts in the light of suggestions made by interested delegations, and had been able to reach an agreement on both drafts. This had allowed a package to emerge of which a similar decision regarding coexistence of the GATT 1947 and the WTO was an integral part. These draft decisions had been circulated to delegations at the start of the meeting. A similar set of decisions reflecting a similar agreement in the area of subsidies and countervailing measures would be circulated shortly.

12. The Chairman of the Sub-Committee on Institutional, Procedural and Legal Matters said it was his understanding that agreement to take the decisions outlined by the Chairman of the Committee constituted a political commitment on the part of all parties to respect the time frames specified therein.

Turning to the composition of the Textiles Monitoring Body, he recalled that a Contact Group on Textiles had been considering this matter for some time. It appeared that a solution acceptable to all parties had proved elusive in that framework. Over the past twenty-four hours, therefore, he and the Chairman of the Preparatory Committee had been holding consultations on this matter. Regrettably, a solution continued to prove elusive. He was confident, however, that a solution to this matter, the only outstanding part of the mandate entrusted to the Sub-Committee, would soon be found.

13. Mr. Lampreia (Brazil), Chairman of the Sub-Committee on Trade and Environment, recalled that he had been consulting on a possible input to the Committee with respect to appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in Article V of the WTO Agreement. Regrettably, although progress had been made, he had not been able to find a consensus on all aspects of this issue. With respect to relations with intergovernmental organizations, he recalled the Sub-Committee had agreed to extend invitations to observe its work to UNEP, FAO, ITC, UNDP, the UN Commission on Sustainable Development, the OECD and EFTA, in addition to the IMF, World Bank, UN and UNCTAD, which had been accorded observer status by the Preparatory Committee. It had also been agreed that further requests for observer status from intergovernmental organizations should be taken up on a case-by-case basis taking into account any criteria and conditions for observer status for such organizations to be approved by the Sub-Committee on Institutional, Procedural and Legal Matters. In his consultations on appropriate arrangements for relations with non-governmental organizations, several delegations had considered it useful to examine, in this context, modalities for improving the transparency of the WTO's work in the area of trade and the environment, including the possibility of general guidelines for derestriction of some or all of the relevant documentation. While there was broad agreement on many aspects of this issue, it had not been possible in the time available to find an overall consensus.

14. Mr. Manhusen (Sweden), Chairman of the Sub-Committee on Services, said that the Interim Group on Financial Services had held its second meeting on 1 December, during which a number of delegations had provided information on liberalization measures taken in the area of financial services since the end of the Uruguay Round. Several delegations had also reported on progress made in recent bilateral negotiations. The Group had agreed, in principle, to meet again in late January 1995 to hear reports on a further round of bilateral negotiations to be held. The negotiating groups on Maritime Transport Services and on Basic Telecommunications had not met since his previous report to the Committee.

15. The outstanding work of the Sub-Committee consisted of two items. The first was the outstanding issues relating to the scope of the GATS. He was continuing informal consultations on these issues and hoped to produce a final report thereon by the deadline set for this work, namely 15 December. The second was the verification of schedules. As he had mentioned at the 30 November meeting of the Committee, an informal meeting on the verification of services schedules would be held on 15 December. At that meeting, all schedules on which bilateral negotiations had been concluded would be verified. According to the agreed procedures, the verification of a schedule could not take place until bilateral negotiations had been concluded. It should be noted, therefore, that negotiations on outstanding schedules should be concluded by 15 December if the governments concerned were to become original members of the WTO under the existing procedures. In conclusion, he envisaged that a final meeting of the Sub-Committee would be held on 16 December.

16. The representative of Mexico said that although the Chairman of the Sub-Committee on Institutional, Procedural and Legal Matters had stated that only one issue remained outstanding, there might well be two. Mexico had some concerns regarding the draft decisions on transitional arrangements, and hoped that these were of a purely technical nature and could be resolved in discussions that day. His delegation hoped that there would be no outstanding issues the following day, and that the Implementation Conference would be concluded successfully.

17. The Chairman said he hoped that Mexico's concerns could be resolved satisfactorily in further discussions which could be held that evening. He then proposed that the Committee take note of the progress reports by the Chairmen of the Sub-Committees, and also take note of the recommendations made to the Committee, including on questions which should be further examined and acted upon by the appropriate bodies of the WTO, on the understanding that they would be incorporated in appropriate textual form in the next revision of the Committee's draft report to the WTO.

18. The Committee so agreed.

19. The representative of the United States said that a number of delegations had raised the issue of the United States' continued participation as a GATT 1947 contracting party following the entry into force of the WTO. He assured Members that in light of the terms of the proposed decision on transitional coexistence of the GATT 1947 and the WTO Agreement, and assuming that a successful conclusion to the discussions on transition from the Tokyo Round Codes was reached, it would be the intention of the United States to remain a contracting party to the GATT 1947 for one year following the date of entry into force of the WTO. He wished to note that the United States' willingness to enter into the proposed decision was based in part on the general understanding that a member of the WTO would not utilize the dispute settlement procedures of the GATT 1947 with respect to another WTO member. Finally, his delegation confirmed the statement of the Chairman of the Sub-Committee on Institutional, Procedural and Legal Matters with regard to the Tokyo Round Codes. The United States was prepared to commit to the time frame set forth under the decisions that had been worked out on the Codes, assuming that one proceeded on the basis of those decisions.

20. The Chairman proposed that the Committee take note of the specific draft decisions presented by the Chairmen of the Sub-Committees at the present meeting, and agree to transmit them to the Implementation Conference for action.

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

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

22. The representative of India expressed concern that the question of the composition of the Textiles Monitoring Body remained unresolved. It was difficult to anticipate at this stage what implications this would have for the Implementation Conference to be held the following day. India regretted that importing countries had shown extreme inflexibility on this issue. It was still not too late to find a solution to this crucial issue, and his delegation was hopeful that the Chairman would succeed in his efforts to arrive at a consensus. However, should the situation not be resolved by the following day, India wished to reserve all its rights with regard to the appropriate further course of action.

23. The representative of Malaysia, speaking on behalf of the Informal Group of developing countries, said that the question of textiles was very dear to developing countries. They believed that there should be a balance in the composition of the TMB, which should reflect the number and the trade interests of producing, exporting and importing countries. On the issue of rotation, he hoped that countries would be more flexible, and agree to having at least some seats on the TMB that would be held in rotation by some countries.

24. The representative of Pakistan said that the TMB was a critical element for the implementation of the Agreement on Textiles and Clothing, and that the question of its composition had been specifically included in the work programme of the Preparatory Committee. Pakistan regretted that there was as yet no decision on the composition of the TMB, despite the maximum possible flexibility shown by

developing countries during the consultations held by the Chairman of the Contact Group on Textiles, and those held by the Chairmen of the Sub-Committee on Institutional, Procedural and Legal Matters and of the Preparatory Committee. Pakistan was concerned at the unwillingness of the major countries to abide by the provisions of the Agreement on Textiles and Clothing. It wondered how a successful conclusion to the Implementation Conference could be envisaged without a decision on the composition of the TMB, and hoped that between then and the Implementation Conference, the issue could be resolved to the satisfaction of all.

25. The representative of Hong Kong associated his delegation with those that had expressed disappointment with the lack of progress on this issue. The Agreement on Textiles and Clothing represented the end of decades of bilateralism in trade in textiles and clothing, and it could not be implemented without multilateral surveillance. It was therefore essential to have a TMB on day one of the WTO. For this reason, Hong Kong had made clear for some time that it attached great importance to a decision on this issue before the Implementation Conference. The Implementation Conference concerned the implementation of all of the results of the Uruguay Round, and not just a majority of them. If it was still possible to agree on a date for the entry into force of the WTO, one would have to face the prospect that some of the constituent elements, such as the TMB, might not be operational on the same date. In these circumstances, Hong Kong would have to consider its position carefully. It was conceivable that Hong Kong, and perhaps some others, might have difficulty in agreeing to proposals to make all the WTO institutions operational while the situation in respect of the TMB remained unresolved. This would be an unfortunate start for the new organization, and Hong Kong was prepared to work as hard as was necessary to avoid it. Having said that, Hong Kong and other exporters had already shown considerable flexibility, and had made a very fair offer on TMB composition. They stood by that offer, and believed that it was now up to the importing countries to show the same degree of flexibility and desire for a solution.

26. The representative of Brazil said it was unfortunate that the question of the composition of a body as crucial as the TMB remained as the only unresolved issue at this stage. He hoped that a solution could be found, and agreed with Hong Kong that a resolution of this issue should be a prior condition to the organization of the institutions of the WTO when it entered into force on 1 January 1995.

27. The representative of Brunei Darussalam, speaking on behalf of the ASEAN countries, said it was unfortunate that, despite all the efforts, a solution to the issue had not been found. Although exporting countries had made great efforts to find a compromise, the position of the importing countries had become unreasonably rigid. The TMB was one of the most important institutions of the WTO, and it was inconceivable for the WTO to come into effect without it. The ASEAN countries reserved their position on this matter.

28. The representative of Korea said that, having been a rotating member of the Textiles Surveillance Body under the Multifibre Arrangement, Korea also had a great interest in the TMB. It was regrettable that the composition of this body had not yet been resolved. Korea believed that the proposal by the Chairman of the Contact Group on Textiles was balanced, reasonable and sensible. Indeed, it represented what his delegation considered to be its bottom-line position. Korea would regret any attempts to link the composition of the TMB to its chairmanship, and hoped that the composition issue could be settled as soon as possible, possibly by the Implementation Conference.

29. The representative of China shared the previous speakers' views. If this matter could not be resolved before the Implementation Conference, it might have some effect on the Conference. He hoped that all parties would show the requisite flexibility, which he had not seen much of on the part of the importing countries, in order to try to resolve this matter as early as possible.

30. The representative of Argentina said that the members of the Group of Latin American and Caribbean countries (GRULAC) fully shared the previous speakers' concerns. They believed that it was necessary to find a satisfactory solution to this issue as soon as possible.

31. The representative of Morocco regretted that an acceptable solution had not emerged despite the efforts of all. An agreement on the composition of the TMB was essential, and would be the best demonstration of collective faith in a strong and equitable multilateral trading system.

32. The representative of Turkey regretted that efforts thus far had failed to produce a mutually acceptable outcome on this issue. Turkey had tried to contribute to a mutually acceptable solution by introducing a proposal that day which could still be of relevance to both exporters and importers.

33. The representative of Egypt said he hoped that the report he had made, in his capacity as Chairman of the Contact Group on Textiles, to the Chairman of the Sub-Committee on Institutional, Procedural and Legal Matters, would form the basis for further consultations on this matter. He believed strongly that a consensus could be built around the proposal he had made in his report.

34. The representative of the European Communities said that his delegation had listened carefully to the statements on the specific issue relating to the TMB. He believed that the Community, for its part, had shown a flexible attitude. In his experience, the principle of parity in the number of exporting and importing countries on the Textiles Surveillance Body under the Multifibre Arrangement had not been challenged, and the Body had worked satisfactorily thus far. Some countries were now asking for that balance to be changed. While the Community was willing to listen to their reasons, it believed that flexibility should be shown by all sides. The Community was ready to continue to search for a solution.

35. The Committee took note of the statements.

C. Arrangements for the Implementation Conference

36. The Chairman informed the Committee of certain aspects of the arrangements for the Implementation Conference. As members were aware, the Implementation Conference would consist of two parts, commencing with the Preparatory Committee meeting at Senior Officials level and followed immediately thereafter by a Special Session of the CONTRACTING PARTIES to GATT 1947. Under Item A(i) of paragraph 3 of the proposed agenda (PC/AIR/40, GATT/AIR/3652), the Preparatory Committee would confirm 1 January 1995 as the date of entry into force of the WTO. In so doing, the Committee would proceed on the understanding that members were committed to bringing the WTO into force on that date and would conclude their domestic ratification processes to this end. Under item A(ii) of paragraph 3 of the proposed agenda, the Committee would take up the draft decisions on budgetary, financial and administrative matters and on transitional arrangements that had been transmitted to it for adoption. These decisions and the developments reported by the Chairmen of the Sub-Committees at the present meeting would be incorporated in the next revision of the Committee's draft report to the WTO. Finally, taking into account the ongoing work in outstanding areas, and with a view to adopting the Committee's report to the WTO, he would propose that a final meeting of the Preparatory Committee be held on the afternoon of 21 December. Members would recall that at the meeting of the Committee on 23 November, he had already indicated the need for such a meeting (PC/M/7, paragraph 23). The Special Session of the CONTRACTING PARTIES to the GATT 1947 would meet in order to take up certain draft decisions pertaining to transitional arrangements within their sphere of responsibility.

37. The Committee took note of the statement.

D. Ratification

38. The Chairman said that with the Implementation Conference round the corner and with roughly three weeks remaining before the WTO's entry into force, the timely conclusion of domestic ratification processes by governments had acquired much greater priority and urgency. Many governments were rightly looking to the Implementation Conference itself as a reference point for depositing their instruments of ratification. Thus far, forty-seven governments had either formally ratified the WTO Agreement or completed their domestic ratification processes, and more were expected to do so by the following day. A large number of governments had stepped up efforts to be in a position to ratify the WTO Agreement as soon as possible in December, and the conclusion of ratification processes in certain key countries had acted as a further spur. For these reasons, the overall trend was extremely positive, and he expected that the vast majority of governments would have completed their ratification processes before the end of the year. Finally, he informed the Committee that applications for accession to the WTO had recently been received from Cambodia, the former Yugoslav Republic of Macedonia and Uzbekistan. He proposed that the Committee take up these applications at a subsequent meeting.

39. The Committee took note of the statement.