

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

RESTRICTED
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(94-2820)

SUB-COMMITTEE ON INSTITUTIONAL,
PROCEDURAL AND LEGAL MATTERS

MINUTES OF THE MEETING HELD ON 28 NOVEMBER 1994

1. The Sub-Committee on Institutional, Procedural and Legal Matters held its tenth meeting on 28 November 1994 under the Chairmanship of Mr. K. Kesavapany (Singapore).

A. Paragraph 8(b)(ii) of the Decision establishing the Preparatory Committee
- Terms of reference and rules of procedure for WTO bodies

2. The Chairman said that apart from the reports of the Contact Groups on which the Sub-Committee had to take action at the present meeting, its work on this part of its mandate had been completed. As regards work on rules of ethical conduct for the settlement of disputes was concerned, which was additional to the Sub-Committee's mandate, Mr. Armstrong (New Zealand) was continuing consultations, and would try to take this process as far as possible. As regards rules of procedure for subsidiary bodies of the WTO and derestriction procedures, he had already stated at previous meetings that whatever work delegations wished to carry out among themselves on these matters would be additional to the Sub-Committee's mandate. Should there be proposals agreed by delegations concerned arising from their separate consultations, a way would have to be found to transmit them to the WTO as a basis for future work.

3. He then drew attention to the report of the Chairman of the Contact Group on Anti-Dumping, Subsidies and Safeguards (document 2287). Annexed to the report were five recommended standard formats for notifications under several provisions of the Agreement on Subsidies and Countervailing Measures. In addition, the report contained two texts on notification of anti-dumping and countervailing duty legislation and on the submission of semi-annual reports on anti-dumping and countervailing duty actions. The report did not contain recommendations with regard to the Agreement on Safeguards, and the reference to safeguards in paragraph 26 of the draft report of the Preparatory Committee to the WTO (PC/R/W/1) would accordingly need to be deleted. Finally, he noted that the Contact Group had begun to consider the issue of procedural arrangements for arbitration under Article 8:5 of the Agreement on Subsidies and Countervailing Measures. Appropriate arrangements would be considered to see how further work on this could be reflected and taken up in the WTO once it had been established. He proposed that the Sub-Committee approve the report by the Chairman of the Contact Group in document 2887, and the recommendations therein.

4. The Sub-Committee took note of the statement and so agreed.

5. Mr. Lundby (Norway), coordinator of the Contact Group on Anti-dumping, Subsidies and Safeguards, said that although the Group had not worked on safeguards thus far, this did not mean it had been uninterested in safeguards. The Group had had certain priorities and, as would be apparent from its report, it would be continuing its work. One could not exclude that the Group, in the time left for it, would be able to touch upon this issue, although the main emphasis would be on arbitration.

A reference to the work on safeguards should therefore be maintained in the report of the Preparatory Committee.

6. The Chairman said that while he had no problem with the suggestion just made, it would be useful to have a discussion on it.

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

8. The Chairman drew attention to the report of the Chairman of the Contact Group on Agriculture (document 2808). As indicated in the report, the agreement reached on notification requirements and formats was part of a package, which included, in particular, the understandings set out in sub-paragraphs 1(a) to (i) of the report. As would be noted from paragraph 2 of the report, there were a number of matters on which it had been agreed that informal consultations would be organized, in a transparent manner, in advance of the first meeting of the WTO Committee on Agriculture. Once the report was approved and issued subsequently as a formal document of the Sub-Committee, paragraph 2 would not need to include the specific reference in brackets to the Informal Background Note of 4 July.

9. The representative of Australia said that Australia and other members of the Cairns Group were disappointed that it had not been possible to obtain a satisfactory outcome on the notification of export subsidy information. The words "on as comparable a basis as possible" in sub-paragraph 1(c) raised an important problem of balance in the degree of obligation to provide information that some participants were committing themselves to in relation to the commitments that others had taken in the second sentence of that sub-paragraph. As mentioned by the Chairman, paragraph 2 of the report indicated that there would be further informal consultations in advance of the first meeting of the WTO Committee on Agriculture on a number of issues covered by the report. On the understanding that the problem he had referred to would be one of the issues that would be taken up in those consultations, Australia would not stand in the way of the approval of the report.

10. The representative of Argentina said that in the WTO, Members should comply, in a balanced manner, with the disciplines agreed upon in the Uruguay Round. His delegation had been participating constructively in this spirit in all the Contact Groups, even when it had had strong reservations, such as in the case of the level of notification required on export subsidies, which, in Argentina's opinion, was not fully in line with the text of the Agriculture Agreement. Despite the good work of the Chairman of the Contact Group, the resulting package was limited by a number of conditions. His delegation would participate in the same manner and in a constructive spirit in the future consultations to take place, in the hope that any misunderstandings could be overcome through dialogue and the effort of all the parties concerned.

11. The representative of New Zealand said that the overriding aim of participants in the Contact Group had been to ensure that the WTO Committee on Agriculture began its work in a spirit of cooperation. The agreement set out in document 2808, which had required compromise amongst the members of the Contact Group, would enable this to be done. Like others, New Zealand had had a concern in respect of export subsidies. This was a key element of the Agreement on Agriculture, and it would be important for the Committee established thereunder to be able to monitor compliance with the commitments in all Members' schedules. Ideally, one was seeking a "full picture" notification on export subsidies which would make it possible to see not only what quantities were being exported with subsidies, but also what quantities were being exported without subsidies. It appeared not to be possible to have one notification to do this. New Zealand was prepared to consider doing this in two separate notifications, provided that it would be possible for the Committee on Agriculture to make a comparison of the goods exported with subsidies with the total of goods exported in order to ensure that Members were meeting their export subsidy reduction commitments, and that a figure could be

derived from such notifications for unsubsidized exports. It was important that Members notified data on total exports on "as comparable a basis as possible" so that a correlation could be made. As others had mentioned, informal consultations needed to continue on this issue as well as on a few others. His delegation looked forward to continuing such consultations in the coming year in a constructive spirit.

12. The representative of India said that his delegation had expressed its difficulties on a number of occasions in the Contact Group regarding the annual notifications on domestic supports. The difficulties were attributable to the fact that in India agriculture was a state subject, and the information for these notifications had to be compiled from about 25 states. However, India would join in the consensus on the formulation suggested by the Contact Group. At the appropriate time, his delegation would approach the WTO Committee on Agriculture to set aside the requirement regarding annual notification other than in respect of supporting tables DS1 to DS3 in document 2808.

13. The representative of Thailand said that his delegation had participated constructively in the work of the Contact Group in regard to notification, review and monitoring procedures so that the WTO Committee on Agriculture would be in a position to carry out its functions effectively following the entry into force of the WTO. The Contact Group had made substantive progress, as reported by its Chairman. However, Thailand shared the disappointment expressed by other members of the Cairns Group with regard to the key element in the package that was still pending, namely on export subsidies. His delegation hoped that maximum constructive efforts by all members of the Contact Group would lead to a substantive, meaningful and balanced solution in due course.

14. The representative of Canada said that, like others, his delegation viewed the report on the results of the work of the Contact Group as significant progress, but felt that it was an imperfect or incomplete product. It did not provide the full picture that one was looking for, especially in the area of export subsidies, and the proper working of the transparency reporting procedure would depend to a very large extent on the goodwill of the Members to make it work. His delegation nevertheless supported the outcome because it was a significant starting point. That being said, Canada fully intended to revert to this issue in the WTO Committee on Agriculture.

15. The representative of Brazil said that, like other members of the Cairns Group which had spoken earlier, Brazil would not block approval of the report in document 2808, although it was not satisfied with the outcome of the work of the Contact Group. Brazil believed that the understanding in sub-paragraph 1(c) could be improved such that a full picture of export subsidies would be available in order to monitor compliance of Members with the commitments in their Schedules. He understood that further informal consultations would be held in the future, and his delegation would participate therein.

16. The representative of Uruguay shared the concerns expressed by other members of the Cairns Group with regard to the notification of export subsidies. In the discussions in the Contact Group, his delegation had raised a further concern regarding certain market access commitments, in respect of which it believed that adequate notification and monitoring procedures should also be agreed. His delegation would raise this matter again in the further informal consultations to be held, and believed that this matter should in any event, be considered in the WTO Committee on Agriculture.

17. The Chairman said that notwithstanding the several expressions of concern, there appeared to be a willingness to approve the report. He therefore proposed that the Sub-Committee approve the report in document 2808, and the recommendations therein.

18. The Sub-Committee so agreed and took note of the statements.

19. The Chairman drew attention to the report by the Chairman of the Informal Contact Group on TRIPS (document 2766/Rev.1) on a recommended format for notifications under Article 5:1 of the TRIMs Agreement, and proposed that the Sub-Committee approve the report, and the recommendations therein.

20. The Sub-Committee so agreed.

21. The Chairman, turning to the rules of ethical conduct in the settlement of disputes, reported that Mr. Armstrong (New Zealand) had indicated that the work that the latter had recently initiated at the Chairman's request had been progressing well. Comments received from delegations had provided the basis for informal consultations among interested delegations. He expected that an informal proposal would eventually emerge for consideration by the Sub-Committee. He could not over-emphasize the importance of the rules of ethical conduct since they addressed the whole issue of credibility of the dispute settlement system under the WTO, and urged all interested delegations to join in the discussion on this issue in Mr. Armstrong's group.

22. The Sub-Committee took note of the statement.

B. Paragraph 8(b)(iii) of the Decision establishing the Preparatory Committee
- Arrangements for effective cooperation with other intergovernmental organizations

23. The Chairman recalled that at its meeting on 11 November, he had informed the Sub-Committee that he had held consultations with delegations with a view to determining how to ensure that the arrangements currently in place between GATT 1947 and the IMF would continue into the following year, and that these arrangements would need to be extended to balance-of-payments matters in the area of services. He had also indicated that, as a result of these consultations, he would be requesting, pending the conclusion of a more definitive arrangement with the IMF, that the Chairman of the GATT 1947 Committee on Balance-of-Payments Restrictions proceed to write to the IMF in this respect. He had further consulted on the contents of a draft letter to be sent to the IMF, and the resulting draft had been distributed to delegations. If delegations had no comments on the draft letter, he proposed that the Chairman of the GATT 1947 BOP Committee be requested to forward the letter to the appropriate authority at the IMF.

24. The Sub-Committee took note of the statement and so agreed.

C. Transitional Arrangements

25. The Chairman said that the issue of transitional arrangements was without doubt the only and most pressing matter left for consideration by the Sub-Committee and it would also be a very pressing matter for the Implementation Conference. He would be consulting bilaterally and plurilaterally on this in the following few days with a view to reaching agreement.

26. The Sub-Committee took note of the statement.

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

27. The Chairman said it appeared that the Contact Group on Textiles needed more time to conclude its work. The Chairman of the Contact Group would be continuing his consultations.

28. The Sub-Committee took note of the statement.

E. Issues relating to the Standing Appellate Body

29. The Chairman said that work on the issues relating to the Standing Appellate Body was continuing. At an informal meeting held that morning, there had been a good exchange of views on the basis of a background paper by the Secretariat. On the basis of that discussion, he had proposed that a drafting session be held the following evening, to which all interested delegations were being invited.

30. The Sub-Committee took note of the statement.

F. Arrangements for the review procedures under the Agreement on Preshipment Inspection

31. The Chairman recalled that at its meeting on 7 October 1994, the Sub-Committee had requested the Secretariat, in consultation with interested delegations and with the International Federation of Inspection Agencies (IFIA) and the International Chamber of Commerce (ICC), to prepare a draft proposal for formalizing, in writing, the status of the ICC, the IFIA, and the Independent Entity under Article 4 of the Agreement on Preshipment Inspection (PC/IPL/M/6, paragraph 60). These consultations were still being pursued. While delegations had confirmed their understanding that the ICC and IFIA were, for the time being, to be the organizations which were to constitute jointly the independent entity under Article 4 of the Agreement, it had not been possible thus far to reach agreement on a draft proposal with respect to the status of the Independent Entity. A solution needed to be found to this problem to enable Article 4 of the Agreement to be implemented. The PSI Agreement was to enter into force for all Members on the date of entry into force of the WTO Agreement. However, under the terms of Article 4, the independent review procedures were not envisaged to become operational until two months after entry into force of the WTO Agreement, since the list of experts from which independent review panellists would be selected was to be drawn up "within two months of the entry into force of the WTO Agreement" (Article 4(b)). He therefore proposed that the consultations be continued with a view to finding a solution as soon as possible, preferably before the entry into force of the WTO Agreement. He proposed also that the Sub-Committee forward a recommendation to the Preparatory Committee that the matter be addressed in the appropriate WTO forum at the earliest possible time after the date of entry into force of the WTO Agreement, with a view to ensuring that the PSI Agreement was fully operational within two months of that date.

32. The Sub-Committee took note of the statement and so agreed.

G. Report of the Preparatory Committee to the WTO

33. The Chairman said that the preliminary draft report (PC/R/W/1) was now in the hands of the Preparatory Committee, which would be expecting inputs from the various Sub-Committees on the additional issues that had been resolved and on those that remained outstanding.

34. The Sub-Committee took note of the statement.