

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Trade Negotiations Committee

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TRADE NEGOTIATIONS COMMITTEE

Thirty-Eighth Meeting: 7 April 1994

1. The Trade Negotiations Committee (TNC) held its thirty-eighth and last meeting at official level, for Heads-of-delegation plus one official, under the Chairmanship of Mr. Peter D. Sutherland. The purpose of the meeting was to finalize preparations for the Ministerial meeting at Marrakesh on April 12-15.
2. The Chairman welcomed the Government of Qatar which, as of the same day, had become the 123rd participant in the Uruguay Round.
3. He said he had convened the present meeting because he believed that the Committee was now in a position to resolve the issues which had been left outstanding at the meeting the previous week. He noted that two texts to be submitted for adoption by Ministers had not yet been finalized, namely, the Marrakesh Declaration of 15 April 1994, and the Decision on the Establishment of the Preparatory Committee for the World Trade Organization.
4. Both texts had been available for a prolonged period of time and had been the subject of widespread agreement in their essential terms. While some outstanding issues had still remained until lately, he was pleased that consultations with delegations over the previous few days had indicated that a solution had been found that seemed to be - and he hoped it was - generally acceptable. In the consultations, he had sought an outcome that would preserve and not prejudice the rights and positions of those holding different views on the particular issue which had caused difficulty. Based on this approach, he proposed that the Committee:
 - approve the text of the Marrakesh Declaration of 15 April 1994 as contained in document MTN.TNC/W/143 and Rev.1 (English only) without any changes and agree to submit it for adoption by Ministers;
 - approve the text of the Decision on the Establishment of the Preparatory Committee for the World Trade Organization as contained in document MTN.TNC/W/142/Rev.1 and agree to submit it for adoption by Ministers. This revised text would add the words "within its scope and functions" to the sub-title of paragraph 8(c) and the square brackets would be removed from sub-paragraph 8(c)(iii). For sake of clarity, he underlined that the inclusion of that phrase in the chapeau referred to all of the sub-headings, including in particular paragraph 8(c)(iii); and

- approve the text contained in document MTN.TNC/W/147 which had been distributed the same day, and agree to request the Chairman of the Ministerial meeting to include the elements contained therein in his concluding statement in Marrakesh.

5. He urged delegations, having regard to the fact that negotiations on these texts had taken place at a very late hour to now consider this negotiation as concluded; otherwise one risked a situation where an issue would be held over in circumstances which he believed were not justifiable, in view of the fact that none of the positions of principle on either side of this debate had been abrogated by the conclusions that had been reached. He appreciated that some delegations might need to obtain final agreement from their capitals. He hoped the vast majority would not require to seek any further clarification from capitals since these texts and the essential elements thereof had been available for a long time. He proposed that the Committee accept that all parties supported this approach, in principle, although some might wish to do so on an *ad referendum* basis, so as to confirm overnight with their authorities the decision taken at the present meeting.

6. The Committee agreed on that *ad referendum* basis, thus allowing for the right of any delegation wishing to do so to contact the Chairman the following day. The Chairman made it clear that he believed that these texts were not negotiable in the context of the reality of the situation in which the participants now found themselves.

7. The representative of Japan congratulated the Chairman on his efforts in achieving this compromise, which was acceptable to his delegation on the clear understanding that, as was clear in the text in MTN.TNC/W/147, there was a reference therein to adding other issues. His Minister would make a reference in his statement at Marrakesh to several items that Japan wished to see included as additional items for the work programme. He himself had already talked on previous occasions of issues for the work programme, and he hoped his minister would limit himself to only a few. For the time being, he would cite three which Japan would like to deal with: trade and national security concerns; examination of the trade distorting effects caused by juridical protectionism, including legal harassment; and examination of the effects of regional arrangements on trade flows. Japan was not opposed, of course, to the discussion of labour standards and trade, and his government had even been urged by labour unions to discuss this matter in the WTO. In Japan's experience, however, this kind of discussion could sometimes degenerate into something with protectionist flavour. He also hoped that there would be some more forthcoming work programme for the strengthening of the multilateral and open trading system, which was what Japan had in mind in proposing the other issues for the work programme. With regard to labour standards, while Japan would state its position when the issue would be taken up in the Preparatory Committee, it shared some of the concerns which had been expressed by certain participants.

8. The representative of Malaysia, speaking on behalf of the Informal Group of Developing Countries, said that they welcomed the Chairman's efforts in finding a solution to the problem at hand. As this paper (MTN.TNC/147) had been circulated only the same day, many of them would need time to consult their Ministers about it. With reference to the other issues, many members of the Group felt that there should be at least an equal and sufficient opportunity for Ministers to raise issues that they would wish to be also adequately reflected in the the concluding statement by the Chairman of the Ministerial meeting.

9. The Chairman said that all would be treated equally in terms of the statement identifying the issues which had been set out. That was obvious and he could confirm this. With regard to the '*ad referendum*' reference, while he had, of course, gavelled the text allowing for the fact that some might wish to get confirmation overnight of their position, the broad consent at the present meeting reflected the fact that these texts had been on the table for weeks. Thus, he expected that the matter would be resolved conclusively by having nobody coming back to him the following day with any complaint

or reservation given that there was a broad consensus behind the text which had been put forward. He did not want to appear to be trying to force a decision on anyone, but wished to simply point out at the same time that all wanted to go to Marrakesh knowing that this matter was resolved. He was taking the signal at the present meeting to be a very positive one and hopefully one that was going to be borne out in the events that would transpire.

10. The representative of Pakistan said that despite some unease with the proposal made, his delegation had not prevented its approval on an *ad referendum* basis. His delegation was unable to agree with this decision at the meeting, because this text had been made available only the same morning at the developing countries' meeting, and unfortunately Pakistan had not been able to participate in the discussions which had led up to the settlement of the issue as proposed by the Chairman. One should not delude oneself as to the real issue which would be proposed for discussion under this particular item, nor about the sensitivity of that issue for both sides of the table. For his part, he would not like to leave any illusions as to Pakistan's position on the particular issue of the so-called labour standards. Pakistan was of the considered view that this was not a trade issue, nor did it fall within the competence of the WTO. Like many others, it believed that this issue had all the potential of being twisted into a protectionist device and of thus impeding trade even further. That was Pakistan's concern, and it was for the proponents of the proposal to allay those concerns and fears.

11. As to the idea of raising any new issues at any stage, all had noted the Chairman's clear statement that sub-paragraph 8(c)(iii) fell squarely under the chapeau of paragraph 8(c), and that, therefore, the reference to scope and functions applied to the discussions on suggestions under 8(c)(iii). Pakistan still believed that it was not prudent to bring up too many issues, either for the sake of bringing up new issues, or for the sake of countering other suggestions regarding new issues, because that was really not in the interests of the smooth launching of the WTO. It would have been Pakistan's preference to exclude this sub-paragraph from the text of the decision, or to leave this issue to be decided by the Ministers. However, since there seemed to be general agreement amongst participants on this issue, it had decided to allow the gaveling of this particular text on an *ad referendum* basis. Pakistan did not wish to create difficulties for the Chairman, but hoped that all understood that that should not be misinterpreted as meaning that Pakistan would be willing to commit suicide when discussions really took place on the substance of the matter of labour standards.

12. The Chairman said Pakistan had correctly interpreted his own point of view in regard to the chapeau and the relevance of the chapeau to the sub-heading, which he knew was a matter of concern to Pakistan. He hoped that had been noted. With regard to the consultations, they had taken place only the evening before, and it had been necessary to try to put together, rapidly, and having regard to the debate which had taken place until then, a text in consultation with a small number of delegations. As that small drafting group had concluded its work the evening before, the results had therefore been available only that day. Finally, he agreed - as, he was sure, did the vast majority of delegations - that it would be counter to the spirit of the WTO to list a whole list of possible subjects that they thought might, at some stage, be relevant subjects for debate in the future. This would not be consistent with the *bona fide* which all expected in the development of the new organization. Those who had serious proposals to put forward and were prepared to back them up with sound arguments on paper subsequently were, clearly, free to do so, just as the United States had indicated its intention to raise one issue for which it would have to advance its arguments.

13. The representative of Austria said he wished to indicate that his delegation could fully support the text contained in MTN.TNC/W/147, and was particularly satisfied with the first paragraph thereof.

14. The Chairman, turning to administrative preparations for the Ministerial meeting, said that further to the information note already circulated (MTN.TNC/INF/24 and Corr. 1), he wished to remind delegations that a briefing on the detailed arrangements for the conference would be held in the Salle

Royale of the Palais des Congrès at Marrakesh on Monday, 11 April, at 4 p.m. This would be a useful opportunity for delegations on site to seek guidance on any remaining logistical matters. He reiterated the importance of ensuring that guidelines on the duration of speeches be fully respected. To date, 92 delegations had requested to speak, and he expected additional requests before the meeting began. Accordingly, it was now envisaged that an evening session would be held on Tuesday, 12 April, to accommodate the additional speakers. He would be consulting the Chairman on any further measures that might be necessary to ensure that the programme was adhered to.

15. He requested delegations, out of courtesy to others, and also in view of the expected television coverage of the meeting and its importance in terms of presenting what all had striven for so long to achieve, to ensure that the allocated seats were filled for the duration of all plenary sessions. The statements by Ministers were expected to be conclude by the evening of 14 April. Accordingly, he proposed that Ministers adopt the Decisions submitted to them by the TNC at official level on the evening of 14 April itself, thus leaving 15 April free for the formal adoption of the Marrakesh Declaration, the closing statement by the Ministerial Chairman, the signature ceremony, and the reception offered by the King of Morocco. He believed that these arrangements had the advantage of separating the business and ceremonial aspects of the conference, and would also assist to give enhanced media focus to both aspects. He understood that 56 delegations had informed the Secretariat that their Ministers would sign the WTO Agreement. He again urged those delegations that had not yet communicated their governments' intentions on signature to do so as soon as possible, so that the necessary arrangements could be made for the signature ceremony.

16. The Committee took note of the statements.