

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

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SUB-COMMITTEE ON INSTITUTIONAL
PROCEDURAL AND LEGAL MATTERS

MINUTES OF THE MEETING HELD ON 13 JUNE 1994

1. The Sub-Committee on Institutional, Procedural and Legal Matters, established by the Preparatory Committee at its meeting on 29 April 1994 (PC/M/1), held its first meeting at the level of Heads of Delegations under the Chairmanship of Mr. K. Kesavapany (Singapore). The purpose of the meeting was to consider a number of organizational matters relating to the work of the Sub-Committee.
2. The Chairman expressed his gratitude to members for the confidence they had shown in him in electing him as Chairman. During the past weeks, he had reflected on the work of the Sub-Committee and had held some informal consultations which had convinced him that he would need the understanding and cooperation of all members of the Sub-Committee in completing the tasks assigned to it.

Mandate of the Sub-Committee

3. The Chairman recalled that, in establishing the Sub-Committee, the Preparatory Committee had mandated it to consider and report on the institutional, procedural and legal matters referred to in paragraph 8(b)(ii), (iii) and (iv) of the Decision establishing the Committee (MTN.TNC/45(MIN), Annex IV). In addition, at its second meeting on 31 May, the Preparatory Committee had agreed that the Sub-Committee be given the task of making specific proposals concerning transitional arrangements to deal with ongoing activities under the GATT 1947, including the Tokyo Round Agreements, after the entry into force of the WTO Agreement, for consideration by the Committee.
4. In the course of informal consultations that he had held prior to the present meeting, it had been suggested that the Sub-Committee might also be an appropriate forum to address the question of the composition of the Textiles Monitoring Body (TMB), a task that was mentioned in paragraph 8(c)(iv) of the Decision establishing the Preparatory Committee. However, since this task had not been formally allocated to the Sub-Committee, the Chairman suggested that he raise this matter with the Chairman of the Preparatory Committee with a view to having the Committee consider, at its next meeting, the question of whether this task might be allocated to the Sub-Committee.
5. The generally shared view was that the Sub-Committee would be the appropriate forum for discussing the question of the composition of the TMB, although this could be done only after the Preparatory Committee had allocated this work to the Sub-Committee.
6. The Sub-Committee agreed that its Chairman should raise the matter of the composition of the TMB with the Chairman of the Preparatory Committee, with a view to having that Committee consider, at its next meeting, the question of whether this task might be allocated to the Sub-Committee.

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

7. The Chairman noted that under this part of its mandate, the Sub-Committee was to consider and report to the Preparatory Committee on "proposals concerning terms of reference for the bodies

of the WTO, in particular those established in Article VI of the WTO Agreement, and the rules of procedure which they are called upon to establish for themselves, bearing in mind paragraph 1 of Article XVI". He recalled that several bodies were established by the Agreements in the Uruguay Round Final Act, and that provisions in nearly all of the Agreements made reference to the functions or tasks that these bodies were expected to fulfil. In limited cases, rules of procedure had also been specified. He believed that these provisions could provide a starting point for the Sub-Committee's work in this area. To assist the Sub-Committee in its task, he proposed that the Secretariat be requested to compile a listing of the provisions in the Uruguay Round Agreements that were relevant to the terms of reference and rules of procedure for the bodies established thereunder.

8. It was clear that a distinction had to be made between the bodies established under the Uruguay Round Agreements. Some, such as those on Balance-of-Payments Restrictions, Budget, Finance and Administration, and Trade and Development, had existed in the GATT for a long time and had done significant work. He proposed that the Chairmen of these existing bodies be asked to undertake an examination of their terms of reference and rules of procedure in the light of the outcome of the Uruguay Round and see how these needed to be modified for the corresponding bodies under the WTO. Once that process had been completed, the Sub-Committee could consider its results with a view to deciding on further action.

9. With regard to other bodies established under the Uruguay Round Agreements, it was his understanding that consultations were being held amongst delegations on certain aspects of the work relating to paragraph 8(b)(ii). While he had no objection to the continuation of such informal consultations, these should be conducted on the understanding that the Sub-Committee would remain the focal point for all such work and would maintain overall control over it. This was necessary because the final responsibility for reporting on these matters to the Preparatory Committee lay with the Sub-Committee. Accordingly, he suggested that those delegations that wished to hold such consultations should liaise with him. Also, the services of the Secretariat should be enlisted in this regard to ensure a smooth process.

10. With regard to the Sub-Committee's work on this part of its mandate, he suggested that the Sub-Committee begin with an examination of the provisions existing in the Uruguay Round Agreements and, with the assistance of the note from the Secretariat and the contributions that he had just mentioned, proceed to determining the future course of action.

11. The representative of India said he believed that the Chairman should be kept informed about consultations amongst delegations on issues relating to paragraph 8(b)(ii), not only in the interest of transparency but also to enable him to conduct these proceedings in an orderly manner. The Secretariat's involvement in this process would have to be formal, but only after the Sub-Committee had agreed to take up specific issues related to the process.

12. The representative of Argentina said that the Sub-Committee's work on this part of its mandate should be given priority. His delegation had no reservations on the establishment of informal groups amongst delegations to consider related matters on the understanding that the Sub-Committee should be the focal point for all work relating to this part of its mandate, and that the Secretariat should perform the rôle of coordinating most, if not all, of the informal groups.

13. The representative of the European Communities said that it would be appropriate for rules of procedure for the various bodies under the WTO to be similar, and possibly even the same.

14. The representative of the United States said that the Sub-Committee's work on this part of its mandate was critical. The United States agreed that a generic approach on rules would be the most efficient, and believed that the focus should be on designing rules that would create an open system

that would work efficiently. Under this part of its mandate, the United States wished the Sub-Committee to also consider, at an early stage, the question of the flow of documents in the WTO, as well as procedures on their restriction and derestriction. Lessons learned in the GATT with regard to these matters could thus be taken into account before one got started with the new organization. The United States also wished to have the Sub-Committee consider, under this part of its mandate, the question of an ethical code of conduct that would apply in the dispute settlement area, in particular to the Appellate Body and to panellists. That matter had not been dealt with in the Uruguay Round negotiations, and would need to be addressed by a body such as the Sub-Committee, in preparation for the WTO. He was aware of the reference in Article 17:9 of the Understanding on Dispute Settlement that working procedures would be drawn up by the Appellate Body, and of a similar reference in respect of panels in Appendix 3 of the Understanding. However, the ethical issues that the United States had in mind did not appear to fall within the scope of "working procedures" such as those mentioned in the Understanding. The United States therefore hoped to be able to address this matter in the Sub-Committee.

15. The Chairman said that rules of procedure could indeed be generic, and that thought could be given to adopting a common set of such rules for all bodies under the WTO. Terms of reference, however, would need to be separate and would depend upon the particular body one was looking at.

16. The representative of Australia said that rules of procedure should be as generic as possible. Furthermore, existing bodies such as the Committees on Balance-of-Payments Restrictions, Budget, Finance and Administration, and Trade and Development, should be given an opportunity to have a rôle in making recommendations to the Sub-Committee about terms of reference for their counterparts under the WTO. Australia believed it was important for the Sub-Committee to be the focal point for all work that was done in relation to this part of its mandate, in particular on the new bodies to be established under the WTO. Australia also believed that although informal consultations would be taking place, a specific rôle should be established for the Secretariat in the work to be done on terms of reference. As to the United States' reference to an ethical code of conduct in the dispute settlement area, his delegation hoped that the United States would be able to elaborate on this matter soon. He recalled that the Dispute Settlement Understanding already contained certain provisions with regard to persons to be appointed to the Appellate Body, and wondered whether one needed to go further. A matter that the Sub-Committee could address, however, was that of appointments to the Appellate Body.

17. The Chairman said that he would ensure maximum participation by all members, as well as by the Secretariat, in any consultations regarding the development of terms of reference for the various bodies under the WTO, and also that the work would be channelled through the Sub-Committee. As regards the suggestion for a code of conduct for the Appellate Body, it was his recollection that the Dispute Settlement Understanding contained a self-governing provision in respect of this body, and one would have to look at that before proceeding further.

18. The representative of Canada supported the suggestions for developing as generic rules of procedure as was possible. As regards an ethical code of conduct in the dispute settlement area, Canada urged the United States to submit more specific ideas.

19. The representative of New Zealand said that work should be undertaken first on this part of the Sub-Committee's mandate, and that generic rules of procedure, adapted as necessary, would be the most appropriate approach. New Zealand believed it was important for the Sub-Committee to be the focal point for matters relating to its mandate. On the question of an ethical code of conduct, New Zealand, like previous speakers, requested that the United States provide further details. As regards Australia's suggestion on appointments to the Appellate Body, New Zealand considered this to be an important matter, and would reflect further on it.

20. The representative of Hong Kong said that he had noted the Chairman's statement that some delegations might wish to conduct informal consultations in respect of terms of reference or rules of procedure for the various WTO bodies. While each delegation had the prerogative to take such initiatives, his delegation had noted also the Chairman's assurance that any such work would be channelled through the Sub-Committee. On the question of an ethical code of conduct, his delegation wished to note that it was up to the Appellate Body to establish its own working procedures. The Preparatory Committee and its subsidiary bodies had to discuss and to come to agreement on matters that were absolutely necessary on the very first day of the establishment of the WTO. These bodies should not be used as a convenient forum for discussing issues that might only be necessary in the longer term. In the absence of a more detailed proposal from the United States, his delegation questioned whether an ethical code of conduct was absolutely necessary in the dispute settlement area. The Sub-Committee should not stray from its tasks, particularly into an area that could have a number of political implications.

21. The representative of Brazil expressed support for a generic approach on rules of procedure. As regards an ethical code of conduct, his delegation was puzzled by the United States' suggestion, and was not convinced that further work remained to be done in this area, given what was already contained in the Dispute Settlement Understanding.

22. The representative of Egypt said that the United States' ideas on a code of conduct should be heard before deciding on work to be undertaken in this area. He asked whether the United States' suggestion was to discuss this matter in the Sub-Committee or in another context.

23. The representative of Uruguay said that although Uruguay recognized the need to work efficiently and that delegations were entitled to hold informal consultations, it strongly believed that the Sub-Committee should be the focal point for work related to its mandate, and the forum in which the decisions relating to its mandate were taken. Uruguay shared others' surprise at the United States' suggestion for a code of conduct in the dispute settlement area, and expressed concern that this might mean the start of a negotiation which Uruguay had not wished to see take place at this time. That being said, Uruguay looked forward to a fuller description of the United States' proposal.

24. The Chairman assured members that he would strive for maximum transparency and full participation and that all matters would finally be brought before the Sub-Committee for its formal consideration. He would however require the freedom to consult informally with as many delegations as possible in order to build the basis for the support that would be required on many of the issues dealt with by the Sub-Committee.

25. The representative of the United States said that the present meeting had been convened to discuss procedural and not substantive issues, and that his delegation had therefore done no more than give notice to others of its wish to have the code of conduct question considered by the Sub-Committee. The United States hoped to have a fuller discussion of this issue, and to provide others the opportunity to judge it on its merits. As a brief background to the issue, he said that procedures under GATT 1947 did not provide for participants in the dispute settlement process, including Secretariat staff, to make disclosures about financial or other interests in a particular dispute. The United States' primary concern was to have information at hand about the participants in the dispute settlement process, as well as greater assurance that they would proceed in a fair and even-handed manner. This would give greater credibility to the dispute settlement mechanism. Other procedural issues, such as how a panel would handle evidentiary issues, were also of concern, and the United States hoped to have the opportunity to discuss these more fully.

26. The Sub-Committee agreed that the Secretariat should be requested to compile a listing of the provisions in the Uruguay Round Agreements relevant to the terms of reference and rules of procedure

for the bodies established thereunder. The Sub-Committee also agreed that the Chairmen of the existing bodies on Balance-of-Payments Restrictions, Budget, Finance and Administration, and Trade and Development, be requested to examine their terms of reference and rules of procedure in the light of the outcome of the Uruguay Round and see whether they needed to be modified for the corresponding bodies under the WTO. The Sub-Committee further agreed that it should be the focal point for all work relating to its mandate.

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

27. The Chairman noted that under this part of its mandate, the Sub-Committee was to consider and report to the Preparatory Committee on "recommendations to the General Council of the WTO concerning the appropriate arrangements with respect to relations with other organizations referred to in Article V of the WTO Agreement".

28. Before the Sub-Committee attempted to develop appropriate arrangements with respect to relations with other organizations, it would be useful to identify the organizations with which the WTO was likely to have to develop relations of one kind or another and, in particular, to differentiate, as had been done in Article V of the WTO Agreement, between inter-governmental and non-governmental organizations (NGOs). With regard to inter-governmental organizations, he suggested that a start be made with those that were specifically mentioned in the Final Act texts, such as the CCC, FAO, IMF, ISO, WIPO, and the World Bank, as well as those for which guidelines for effective cooperation had already been provided for in the Agreements concerned. There were several other inter-governmental organizations whose existing mandate was relevant for the functioning of the GATS, such as the ITU, IMO and so on. These should also be considered by the Sub-Committee. He proposed that in order to assist the Sub-Committee in its task, the Secretariat be requested to compile a list of the organizations concerned these categories, as well as any provisions in the Uruguay Round Agreements that provided parameters for cooperation with these organizations.

29. As regards NGOs, he noted that there was at present no precedent for any form of association with them in the GATT's work. However, the interests of such organizations, in particular in the environmental field, was a relatively new phenomenon that would have to be taken into account. In this regard, he suggested that the Sub-Committee attempt, as it progressed in its work programme, to develop a generic approach to the question of the type of association with NGOs that would appear to be most appropriate.

30. The representative of Argentina said that his delegation had not yet been able to assess fully the implications of developing institutional relations with NGOs. The GATT had always been an inter-governmental organization and had operated satisfactorily in that form. While it was true that in the trade and environment area, it had been agreed to establish a certain relationship with NGOs, this should not set a precedent for other areas of the WTO's work.

31. The Chairman said that during the concluding phase of the Uruguay Round negotiations, mention had been made of the need for the issue of NGOs to be looked at in a generic manner. It was in the light of the debate at that time that the Sub-Committee could look at this matter.

32. The representative of the European Communities said that although the Chairman had referred to the most important organizations in his statement, he would like to propose the addition of the International Trade Centre (ITC) to the list. The Community believed that greater clarification on the links between the work of the ITC and the WTO would be desirable.

33. The Chairman noted that, pursuant to paragraph 8(a)(vi) of the Decision Establishing the Preparatory Committee, the Sub-Committee on Budget, Finance and Administration had been mandated to discuss the relationship between the ITC and the WTO.

34. The representative of the United States noted that the issue of the relationship between the WTO and NGOs formed part of the Sub-Committee's mandate because of the reference in Article V of the WTO Agreement, and also because of the discussions that had taken place toward the end of the Uruguay Round. The United States looked forward to a full and fair discussion on this issue in order to reach an understanding on how to move forward.

35. The representative of Indonesia said that his delegation had noted carefully the Chairman's suggestion that the Sub-Committee give priority to those inter-governmental organizations mentioned specifically in the Uruguay Round Agreements. However, the Chairman had suggested that certain other organizations, such as those in the services area, should also be included in the work of the Sub-Committee. In this connection, Indonesia wished to draw attention to two additional inter-governmental organizations that might also be included in the Sub-Committee's work, namely the UN and the UNCTAD. It was time to give more thought to the relationship between the WTO and these organizations, particularly when the UN was addressing seriously the agenda for development and when the UN Commission for Sustainable Development was dealing with an area that involved part of the WTO agenda. With regard to the UNCTAD, it was soon to conduct its mid-term review, at which the UNCTAD - WTO relationship, from the UNCTAD's point of view, would be addressed. With regard to relations with NGOs, Indonesia preferred to take a cautious approach at the present time.

36. The representative of Australia said that one needed to be very careful in dealing with the issue of relations with NGOs, and supported the cautious approach set out by the Chairman.

37. The representative of New Zealand agreed that the focus should first be on those inter-governmental organizations that had been identified in the Uruguay Round Agreements. Given the extensive programme of work before the Sub-Committee, it was important to at least ensure that effective relations were in place from the very first day for those organizations in respect of which this was essential. With regard to relations with NGOs, he noted that under the Decision on Trade and Environment (MTN.TNC/45(MIN), Annex II), the Sub-Committee on Trade and Environment, and the Committee on Trade and Environment when it was established, had been called on 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". This was something that would, therefore, need to be considered in due course.

38. The representative of Egypt said that the UNCTAD should be one of the organizations that the Sub-Committee should consider in addressing this part of its mandate. With regard to relations with NGOs, Egypt believed, like previous speakers, that this matter should be addressed cautiously.

39. The Sub-Committee agreed that the Secretariat be requested to compile a list of inter-governmental organizations mentioned in the Uruguay Round Agreements together with the provisions therein that provided parameters for cooperation with these organizations, as well as of other inter-governmental organizations whose work would be relevant to the WTO.

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

40. The Chairman noted that under this part of its mandate, the Sub-Committee was to prepare and submit a report on the activities of the Preparatory Committee to the WTO. He proposed that the Sub-Committee agree that work on this part of its mandate be left to a later date.

41. The Sub-Committee so agreed.

Transitional Arrangements

42. The Chairman noted that under this part of its mandate, the Sub-Committee was to "make specific proposals concerning transitional arrangements to deal with ongoing activities under the GATT 1947, including the Tokyo Round Agreements, after the entry into force of the WTO Agreement". He said that the Sub-Committee would need to be clear as to the scope and nature of the work it would have to undertake on this part of its mandate. He suggested that the Sub-Committee establish a comprehensive list of the issues that needed to be looked at, before formulating specific proposals for dealing with them for consideration by the Preparatory Committee. He proposed that the Secretariat be requested to prepare a factual note describing the issues involved, which would assist the Sub-Committee in establishing priorities among the issues and in determining the kind of transitional arrangements required.

43. The representative of India said that there appeared to be different interpretations about the nature of the transitional arrangements that would be required between the GATT and the WTO, and that the Sub-Committee would need to be clear about the scope of its mandate in this area.

44. The representative of Argentina said that the Sub-Committee would need to know in detail the list of issues to be considered under this part of its mandate.

45. The representative of Hong Kong said that the Sub-Committee's discussion on transitional arrangements would be important not only because of its bearing on the move to be made from the GATT to the WTO, but also in terms of determining which issues would fall within the scope of this part of the Sub-Committee's mandate.

46. The Sub-Committee agreed that the Secretariat be requested to prepare a factual note describing the issues relating to this part of the Sub-Committee's mandate.

Observers

47. The Chairman said that the Committee needed to take action on the question of governments and organizations to be invited to attend its meeting in the capacity of observers. He proposed that the Sub-Committee follow the practice of the Preparatory Committee in this regard and agree to invite to its meetings as observers the same nineteen associated governments and four international organizations, namely, the UN, UNCTAD, IMF and World Bank. Requests for observer status from other organizations could be considered on a case-by-case basis.

48. The Sub-Committee so agreed.

Schedule of Work

49. The Chairman said that he would request the Secretariat to make available, as soon as possible, the background notes that had been requested of it. It was his understanding that the note concerning terms of reference and rules of procedure would be made available by 26 June, that on relations with international organizations by 28 June, and that on transitional arrangements by 5 July. It would be his intention to begin work on terms of reference and rules of procedure as soon as the note by the Secretariat on this subject had been distributed, in other words towards the last week of June. At the same time, he would be willing to meet with delegations that wished to begin work on particular areas of this part of the Sub-Committee's mandate. Following his discussions with these delegations, he would hold consultations with members of the Sub-Committee and put forward proposals. Work on the other parts of the Sub-Committee's mandate would be started as soon as the relevant notes by the Secretariat had been distributed.

50. The Sub-Committee took note of the schedule of work outlined by the Chairman and of the statements.