

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

RESTRICTED

PC/IPL/M/3

1 August 1994

(94-1562)

SUB-COMMITTEE ON INSTITUTIONAL,
PROCEDURAL AND LEGAL MATTERS

MINUTES OF THE MEETING HELD ON 19 JULY 1994

1. The Sub-Committee on Institutional, Procedural and Legal Matters held its third meeting on 19 July 1994 under the Chairmanship of Mr. K. Kesavapany (Singapore).
 - A. Paragraph 8(b)(ii) of the Decision establishing the Preparatory Committee
 - (i) Terms of reference for WTO bodies
2. The Chairman recalled that at its meeting on 4 July, the Sub-Committee had had a first exchange of views on the Secretariat's non-paper on this subject dated 28 June. Following the discussion at that meeting, and from his informal contacts since then, it appeared that there was general agreement that a set of generic terms of reference for the bodies of the WTO was not necessary and that, except in one or two instances, the terms of reference contained in the various WTO Agreements were sufficient. Work would continue, however, on the terms of reference for the WTO Committees on Budget, Finance and Administration, Balance-of-Payments Restrictions, and Trade and Development, which was being undertaken in the three existing Committees. Accordingly, it could be concluded that, for the moment, the Sub-Committee's work on this part of its mandate had been completed. Clearly, members could revert to this matter at any time if they had any particular points to raise.
3. The representative of the United States said that his authorities were currently examining the texts of the Uruguay Round Agreements to try to identify whether specific terms of reference were needed to guide the work of any of the bodies established thereunder. His delegation could therefore go along with the Chairman's suggestion that work on this part of the Sub-Committee's mandate be regarded as completed for the moment, on the understanding that members could revert to it in the fall, as necessary.
4. The Chairman said it was his understanding that the Sub-Committee did not need to revert to the question of terms of reference unless there were specific reasons to do so. The responsibility would therefore be on individual delegations to raise any particular issues on terms of reference in the future.
5. The representative of New Zealand said that a number of delegations were reflecting on the question of terms of reference and wished to keep open the possibility of reverting to this in due course. He had noted the Chairman's statement that it would be the responsibility of individual delegations to raise any particular issues concerning this matter if they so wished.
6. The Chairman recalled his opening statement in which he had said that the terms of reference contained in the various Agreements were sufficient "with one or two exceptions". Among the exceptions was the Agreement on Agriculture. Delegations could, however, raise any other issues of concern to them, as necessary.

7. The representative of Australia referred to the lack of any provision in the WTO Agreement for a successor to the GATT Committee on Tariff Concessions. Australia believed that a similar body would continue to be needed in the WTO, and asked how this question might be handled in the future.

8. The Chairman said that this subject would need to be taken up with the Chairman of the Preparatory Committee in the first instance. If the Preparatory Committee decided that this matter should be addressed in the Sub-Committee, the latter would do so.¹

9. The representative of Canada noted that the existing Committees on Budget, Finance and Administration, Balance-of-Payments Restrictions, and Trade and Development were considering the terms of reference for their counterpart bodies under the WTO, and that these would be brought before the Sub-Committee for its examination and approval. In his understanding, therefore, when the Chairman said that work on this part of the Sub-Committee's mandate could be regarded as completed, it was to be so regarded only until the work of the above-mentioned Committees was brought before the Sub-Committee, or until any other matters were raised.

10. The Chairman confirmed Canada's understanding.

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

(ii) Rules of procedure for the bodies of the WTO

12. The Chairman recalled that at its meeting on 4 July, the Sub-Committee had requested the Secretariat, in consultation with delegations, to draw up draft rules of procedure for the Ministerial Conference, the General Council and subsidiary bodies. The Secretariat had since been working on such a paper and had received inputs from a few delegations. The material at hand was insufficient, however, and not comprehensive enough for a paper to be drafted that would differ greatly from the Annex to the non-paper already before the Sub-Committee. Moreover, some delegations had indicated that they would need more time to reflect on issues relating to certain rules of procedure. Indeed, it appeared that certain aspects of the rules needed to be considered carefully before a paper could be finalized. He suggested, therefore, that the Sub-Committee revert to this matter immediately after the summer break. Meanwhile, the Secretariat would continue to work on the paper, and he would urge delegations that had inputs to provide to make these available as soon as possible to the Secretariat.

13. The representative of New Zealand said that the Sub-Committee should undertake continuous, comprehensive work on rules of procedure which should keep pace with the work in the Sub-Committee as a whole. His delegation therefore welcomed the Chairman's suggestion that the Sub-Committee revert to this matter immediately after the summer break.

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

(iii) Contact Groups

(a) Review of work

15. The Chairman recalled that contact groups had been established to deal with issues relating to Agriculture, TRIPS and Anti-dumping and Subsidies. Since the 4 July meeting of the Sub-Committee,

¹Following the meeting, the Chairman discussed the matter with the Chairman of the Preparatory Committee, who confirmed that this was a matter which could quite properly be handled by the Sub-Committee. The Chairman announced at the Preparatory Committee meeting on 22 July that he, therefore, proposed to take up this subject at the next meeting of the Sub-Committee.

the Contact Group on Agriculture had held one more meeting, essentially to begin work on elaborating notification requirements and formats under the relevant provisions of the Agreement on Agriculture. For this purpose, the Contact Group had had before it an informal background note by the Secretariat. Questions such as how the Committee on Agriculture might be structured to carry out its review process and other functions, as well as related working procedures, were to be taken up in more detail at an appropriate time. Views had been expressed at that meeting that the Contact Group should also visit the question of terms of reference for the Committee. The next meeting of the Group would be held in September.

16. The Contact Group on TRIPS had held its first meeting that morning. To aid it in its work, the Contact Group had had before it an informal note by the Secretariat listing the notification obligations in the TRIPS Agreement. The discussion had focused on these notification obligations, particularly those in Article 63.2 on the notification of national laws and regulations. In connection with this provision, the need to enter into an early dialogue with WIPO on the question of the possible establishment of a common register containing such laws and regulations had been widely stressed. Many participants had also spoken of the desirability of the Contact Group considering, in the fall, other areas of possible cooperation between the WTO and WIPO as a basis for the initiation of consultations with the WIPO. To facilitate the Contact Group's consideration of these matters in the fall, the Secretariat had been requested to prepare, on the basis of the discussions in the Group and in consultation with interested delegations, and in the light of informal contacts with the WIPO Secretariat, a checklist of possible areas of cooperation between the WIPO and the WTO, specifying any relevant WTO provisions. In the context of this paper, the Secretariat had been asked to provide information on the existing WIPO register of national legislation, including such matters as the nature of the obligation to notify in WIPO, the coverage of the WIPO notification system in relation to the TRIPS Agreement, the timing and distribution of notifications under it, and the languages in which notifications were made and circulated. The Contact Group would meet again in the fall to pursue its work, with the aid both of the note already distributed by the Secretariat on notification obligations and the additional paper that it had been requested to prepare.

17. The Contact Group on Anti-dumping and Subsidies planned to hold its first meeting on 22 July. With regard to the suggestion by Egypt at the 4 July meeting of the Sub-Committee that the issue of Safeguards be included in the deliberations of this Contact Group, he said that on the basis of approaches by delegations and views which had been expressed to him directly or through the Secretariat, there appeared to be no objection to assigning the Safeguards issue to this Contact Group.

(b) Participation of international organizations

18. The Chairman said that in the course of the Agriculture Contact Group's informal consultations regarding the WTO Committee on Sanitary and Phytosanitary Measures, many delegations had been of the view that there should be scope for representatives from the Codex Alimentarius Commission, the International Office of Epizootics (IOE) and the Secretariat of the International Plant Protection Convention (IPPC) to participate on an *ad hoc* basis in the Contact Group's informal consultations on relevant issues. These specialized organizations had been closely associated with the negotiations in this area, and the Agreement on Sanitary and Phytosanitary Measures required that the Committee cooperate closely with these organizations on a number of matters. The delegations involved in these informal consultations had asked that this matter be brought to the attention of the Sub-Committee. It had been suggested that the Sub-Committee might draw a distinction between this type of *ad hoc* participation, which appeared necessary and well-founded for technical reasons - first and foremost for the Agriculture Contact Group, but also perhaps for others - and the issue of observer status in the Sub-Committee. He had been informed that this type of situation might arise in other Sub-Committees as well. *Ad hoc* participation might have the advantage of having these groups benefit from what appeared to be necessary expertise, without having to formalize the relationship at this stage.

19. The representative of the European Communities recalled that at the 4 July meeting of the Sub-Committee, his delegation had expressed doubts as to the appropriateness of admitting sectoral organizations as observers in the Sub-Committee. He recognized that the question now before the Sub-Committee was whether some of these organizations should be invited on the initiative of members of the contact groups to be present at their deliberations. If the contact groups felt that it would be appropriate to have the expertise of one or other of these organizations, and there was consensus on that, the Community would not have any difficulty although it would note that it might then be necessary to hold meetings of contact groups in the Council Room to ensure that adequate seating space was available. The Community believed that a similar arrangement would be appropriate in respect of the FAO as well.

20. The representative of Argentina said that the participation of the three organizations on an *ad hoc* basis in the Contact Group on Agriculture was desirable in view of their expertise in the sanitary and phytosanitary area.

21. The representative of Egypt recalled that the contact groups were informal bodies. As a matter of principle, Egypt would not be at ease speaking in an informal meeting in the presence of another international organization. However, if any contact group wanted the expertise of one organization or another during a particular informal meeting, Egypt would not object, on the understanding that this would be at the request of the members of the contact group and following agreement among them to invite such an organization for discussions regarding a particular matter.

22. The Chairman said that it had been made clear that organizations would only be invited at the request of contact groups and on grounds that the organization concerned had specific expertise which could be made use of.

23. The representative of India said it would be wrong to give any authority to contact groups to decide which organizations should be present at their meetings. Contact groups were purely informal arrangements, and observers were not invited to meetings of an informal nature. One had to make clear that the contact groups were intending to seek technical advice from expert organizations, and that this was not a question of observership. A decision should be taken in terms of saying that if relations with any technical organization were envisaged in the Agreement itself, then the contact group could, by consensus, decide to invite experts from that organization to be present and to seek its advice, but not as an observer. On the same basis, the FAO could also be invited when issues relating to some of the commitments envisaged in the Agreement came up for discussion, whether in the Sub-Committee or in a contact group.

24. The Chairman said that the request for the participation of the three organizations, on account of their expertise, had been made in the Contact Group on Agriculture, and that he had avoided any decision until the Sub-Committee had considered this matter. Thus, it would not be the contact groups that decided on the participation of any organization, but rather the Sub-Committee. One would thus be able to avoid straying unwittingly into the question of observer status for these organizations in the contact groups.

25. The representative of Uruguay supported the suggestion to invite the three organizations concerned to participate in the work of the Contact Group on Agriculture. Similar requests might be made by other contact groups, such as by the TRIPS group to invite WIPO to participate in its work on certain technical aspects, and Uruguay believed that such requests should be dealt with in a flexible manner.

26. The Chairman said that in addition to a flexible approach, he would suggest a practical approach.

27. The representative of Australia said that the question of participation of the three organizations in the work of the Contact Group on Agriculture should be considered in a practical way, as the Chairman had suggested, and on its own merits without being linked to any broader issues. There was clearly a perceived need in the Contact Group for the participation of these organizations, and Australia believed that authority should be given to the Group to allow their participation.

28. The representative of the United States associated his delegation with the statement by Australia, and urged a flexible approach. His delegation believed that no linkage should be made with any broader issues at this stage, and that one should continue to take a case-by-case approach on such requests.

29. The Sub-Committee took note of the statements and agreed that the Codex Alimentarius Commission, the IOE and the IPPC Secretariat be allowed to participate in the work of the Contact Group on Agriculture on an *ad hoc* basis, on the understanding that this participation was in terms of providing expertise and in relation to the relevant Agreement.

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

30. The Chairman drew attention to the Note by the Secretariat on the arrangements between the GATT and Uruguay Round bodies and international organizations (PC/IPL/W/3). Together with the earlier Note in PC/IPL/W/2, this could provide a good starting point for the discussion on this part of the Sub-Committee's mandate, which could later be reflected in concrete proposals and guidelines for the Sub-Committee to examine. The note in PC/IPL/W/3 outlined, among other things, the criteria that had been used to invite international organizations to Uruguay Round bodies as well as to the Marrakesh Ministerial meeting, which could provide useful guidelines and precedents for the Sub-Committee's work. He noted that for certain organizations such as the CCC, ISO, IEC, and the IMF and World Bank, a basis for drawing up guidelines for effective cooperation already existed in the Uruguay Round Agreements.

31. The representative of Australia said that the relationship between the WTO and other intergovernmental organizations should be similar to those which the GATT presently had, although with a wider range of contacts to take into account the WTO's additional obligations and responsibilities in areas such as services, intellectual property and agriculture, including in the sanitary and phytosanitary area. One could think of three categories of relationships between the WTO and other intergovernmental organizations.

32. The first category would be those organizations which had been given a specific rôle under particular WTO Agreements, or indeed in the GATT 1994, such as the IMF, World Bank, CCC, Codex Alimentarius Commission, the International Office of Epizootics and the International Organization for Standardization. The relationship between these organizations and the WTO might be formalized in some way through the establishment of memoranda of understandings between the heads of these organizations and, if appropriate on each occasion, the Chairman of the General Council of the WTO.

33. The second category of organizations would be those that had a function to supply information regularly to the Committees overseeing the individual WTO Agreements, or to the Secretariat, and would include organizations such as the UNEP and the CSD in the environment area, as well as those dealing with professional services, such as the accounting profession organizations. In this category would be included those organizations that regularly provided information to the Secretariat, as distinct from those that participated in some form in the regular meetings of WTO Committees. One could think in terms of some exchange of letters being concluded between these organizations and the Secretariat setting out the terms under which this regular information should be provided.

34. The third category of organizations would be those that simply wished to be kept informed of what the WTO was doing in its various constituent agreements, and it was this category of organization which fell more readily into the observer category. Organizations that could be included in this category were, among others, the United Nations, FAO, and perhaps the OECD in particular cases. A decision on the participation of these organizations as observers in WTO meetings could be dealt with on the same kind of case-by-case basis as had been used in the past, without any particular need for more formal arrangements.

35. The representative of the United States said that Australia's categorization was helpful. He would note, however, that in the case of some organizations, as in the case of the WTO, there was a distinction between the secretariat and the membership. In such cases, one might want to look at the kinds of functions that were performed by the members as opposed to those performed by the secretariats. This would be useful because one would need to know with whom the WTO should develop relations in order to get certain information and in order to work harmoniously with a particular organization. He suggested that this question might be analyzed by the Secretariat. Referring to Australia's third category of organizations, namely those that might wish to be kept informed about the work of the WTO, he said that one might also wish to look in the future at the question of those organizations the activities of which the WTO would need to be kept informed of. This question need not necessarily be addressed by the Sub-Committee, however, and could be left to a later date. Another question that might be looked at in the future concerned those organizations that did not fit into Australia's other categories, but whose activities related to those of the WTO and about which the latter might wish to be kept informed of in some formalized way. Finally, he reiterated his delegation's interest in the other organizations mentioned in Article V of the WTO Agreement, and hoped to be able to provide an input in this regard when the Sub-Committee reverted to this part of its mandate after the summer break.

36. The representative of the European Communities agreed that one could categorize several types of arrangements with international organizations and distinguish, in particular, between a formal status of observership and some other *ad hoc* arrangement whereby certain organizations were invited at certain occasions only. The Sub-Committee should, however, avoid taking a maximalist approach. While it was certainly relatively easy to decide that international organizations should be granted observer status, it would be extremely difficult to withdraw that status at a later stage. One should therefore identify which organizations needed to be present in the future work of the WTO, and not have a maximalist list of those that might have an interest, or those that the WTO might be interested to see admitted at some later stage. One might also wish to have reciprocity, and therefore should distinguish, in the category of those international organizations that would be granted formal observer status, between those in which the WTO would have reciprocity and those in which that did not appear necessary. His delegation wished to come back to this subject after the summer break for a more thorough discussion.

37. The representative of Canada said that the Sub-Committee had a lot of work to do and little time to do it in. Accordingly, on the question of relations with intergovernmental organizations, the Sub-Committee should concentrate on those with which relations would be needed on day one of the WTO, such as the IMF, World Bank, UN and WIPO, as well as any others that the Sub-Committee identified as falling into this category. The question of developing relations with other organizations could be put off until after the entry into force of the WTO. On the question of non-governmental organizations referred to by the United States, the Sub-Committee might want to wait for the input expected from other groups before proceeding further.

38. The Chairman agreed that the Sub-Committee should concentrate on the essentials first, and consider only what was necessary for the WTO to be operational as of day one.

39. The representative of India said that his delegation could, broadly speaking, go along with Australia's categorization in respect of those organizations which would have a functional relationship with the WTO or any of its bodies. However, relations between the WTO and certain organizations, namely the IMF and the World Bank, might have to be more than functional, and would need to be considered separately. This relationship might have to be more unique than that with other organizations and would have to consider aspects such as the nature of cooperation between the members of the WTO and these institutions on the one hand, and that between the secretariats of these organizations on the other.

40. Turning to international organizations in the areas of TRIPS and services, he said that although specific cooperation with these organizations had been envisaged in the Agreements concerned, there was the additional issue of developing more general cooperation in order to ensure that the WTO did not duplicate the functions of these organizations. He underlined that he was referring here to international inter-governmental organizations and not to trade bodies or regional inter-governmental organizations with less than universal membership. Another matter that would need to be addressed separately was that of relations with the UN as a whole, including its subsidiary organs such as the UNCTAD. These organizations could not be put into the category of those that were only interested in receiving information from the WTO or in providing it with information. As to priorities, his delegation believed that, except in some very limited cases, one did not have to be ready with the exact nature of these relationships in the greatest of detail before the WTO Agreement came into effect. What was really needed was a great deal of deliberation, and once members had clarified their own ideas regarding the kinds of mechanisms they wished to see in place, contact would need to be made with the other organizations concerned to elicit their views on the nature of the relationship which they envisaged with the WTO.

41. The representative of Uruguay said that the Sub-Committee would have to think in terms of developing relations with two broad groups of organizations. The first group was organizations with which some kind of special relationship had to be established, and which, as India had stated, might differ from one organization to another in detail. Clearly, the number of such organizations was not particularly large, and would include the World Bank, IMF, and perhaps also the CCC, the WIPO and the three organizations specifically mentioned in the Agreement on Sanitary and Phytosanitary Measures. There were other bodies which might be added, but that would essentially be the list of the group with which special relationships would be established. The detailed nature of the relationship would vary from one organization to the next. The other broad group would be those other organizations which did not fall into the first category. While there would be differences from one organization to the next in this category, he believed the first step would be to establish this general chart of the situation and then decide on the action for each of these broad categories.

42. The representative of Argentina said that some sort of mechanism for contact between the Preparatory Committee and the organizations defined in each of the Uruguay Round Agreements, such as for example in the TRIPS Agreement, should be established urgently so that there was no duplication of effort and so that it would be absolutely clear as to how the notification procedures would function. The second and more important task would be to establish the categories of relationship between the WTO and other organizations, and to determine the types of links to be developed with other international organizations. There were certain guidelines that were implicit in the Agreements themselves. One would then be able to have some idea of how to deal with the sort of range of problems that had been raised at the present meeting, such as the nature of the relationship between secretariats and between members of organizations. The Sub-Committee should not try to achieve anything too ambitious over the next few months. The most urgent task was to establish such arrangements as were necessary to ensure that the Agreements that had been entered into would be operative as of day one.

43. The Chairman said that the Sub-Committee should adopt a minimalist approach because it would be easier to invite other organizations in than to terminate the relationship with them once it was established. The Sub-Committee would need to elaborate the basis of the relations and then decide which organizations the WTO would want to develop relations with. A main consideration would be that any relationship should be decided on the basis of functions. The IMF, World Bank and WIPO had been mentioned in the discussion, as also UNCTAD, with which relations would be important from a developing-country perspective. One would also need to look at bodies which handled specific issues in the new areas that the WTO would be dealing with. He would endeavour to have a paper before the Sub-Committee following the summer break which would provide guidelines that would be based on the comments made, particularly by Australia and India, among others.

44. With regard to organizations that might be invited as observers to the WTO, it was his view that some broad guidelines should be developed to facilitate consideration of this matter. Among the elements that might be included in such guidelines were:

1. Should the approach to observer status in the WTO bodies be general or body-specific?
 - a) Generally, should the purpose of observer status in the WTO bodies for international organizations be to enable them to follow discussions therein on matters of direct interest to them or to follow all matters?
 - b) To which meetings of which WTO bodies did observer status confer a right?
 - c) What did observer status entitle an organization to:²
 - the right to speak?
 - the right to circulate documents?
 - the right to receive documents - and if so, which ones?
2. Nature of the work of the organization:
 - Should the WTO, or WTO bodies individually, consider requests for observer status only by those organizations which had a declared and recognized competence, or genuine interest, in trade policy matters dealt with by it or its bodies?
3. How global and open-ended was the organization applying for observer status?
4. Should organizations that have had observer status in the past in GATT 1947 bodies and in Uruguay Round bodies maintain that status subject to new WTO-specific conditions to be agreed?
5. Should the WTO or its bodies consider requests for observer status on a case-by-case basis, taking into account such factors as the number of WTO Members in the organization concerned, and whether the WTO had reciprocity to attend meetings of the other organization?

²The right to vote or to participate in decision-making did not enter into consideration.

6. Should there be a provision for reviewing the status of a particular organization after a number of years if the latter has not attended WTO meetings, or had not complied with other conditions agreed upon?

45. The representative of the United States wondered if the notion of whether or not a particular organization was global and open-ended was useful as a matter of principle. If there was an organization that represented governments whose countries produced the majority of a commodity or of a particular good or service, then the fact that it was regional as opposed to global would result in the WTO cutting itself off from dialogue with that organization on that basis. It would seem useful that if the nature of the organization was such that all would benefit from a relationship, then this principle might be getting in the way of something useful and potentially something that would facilitate the work of the WTO. His delegation offered this as a preliminary comment, and looked forward to coming back to this matter at a future meeting. Clearly, the notion of observer status was part of the larger issue of how the WTO would relate to other organizations, and the United States hoped to have an opportunity to follow through on this question in the fall.

46. The representative of India said that the questions raised by the Chairman were very relevant, and his delegation would revert to them at the time of the Sub-Committee's next substantive discussion on the WTO's relations with other organizations.

47. The representative of New Zealand said that the criteria mentioned by the Chairman would in due course be very useful. His delegation, like that of the United States, would want to reflect on whether or not open-ended membership was an essential criteria for deciding the question of observership. He recalled that when observership for the Marrakesh Ministerial meeting had been decided, some broad criteria had been mentioned, as indicated in paragraph 16 of PC/IPL/W/3, and that a number of the organizations invited as observers did not necessarily have open-ended membership. One would therefore want to reflect on this issue in due course.

48. The Chairman said that there had to be a cut-off point, otherwise it would be difficult to accommodate all the bodies that requested observer status. Having said that, New Zealand's comment was one that should be duly considered.

49. The representative of Morocco said that the criteria suggested by the Chairman were useful because they offered a mix between a horizontal approach and a case-by-case approach to deciding on observer status. By following such an approach, one could have certain well-defined criteria for granting observer status on a case-by-case basis. As regards the criterion of reciprocity, in his delegation's view, observer status was limited for a fixed period of time. Committees, in any case, had a limited duration, and he did not think even international organizations would be granted observer status for ever. His delegation believed that all universal or regional organizations which displayed an interest or which could provide useful input to the work of the WTO should be invited as observers.

50. The representative of Australia expressed support for the statements by the United States and New Zealand to the effect that the WTO should not cut itself off from the benefits and value of having organizations of a regional nature participate as observers in the work of the various WTO Committees.

51. The Chairman said that when he had made the point about how global and open-ended an organization applying for observer status was, he had posed a question and had not indicated that non-global organizations should necessarily be kept out. In the case of such organizations, however, it would certainly be relevant to examine how wide their membership was, what functions they performed and so on.

52. Before concluding the discussion, he informed the Sub-Committee that he had received a request from the Director-General of WIPO to speak with the latter on an informal basis regarding the nature of relations between WIPO and WTO. A similar request had been made by the IMF. He believed it would be useful for him to have an initial non-committal exchange of views both with the Director-General of WIPO and the relevant IMF officials. He hoped that there would be no objection to his undertaking these consultations.

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

C. Transitional arrangements

54. The Chairman said that the issue of transitional arrangements was probably among the most complex and sensitive issues to be tackled by the Sub-Committee. He had approached it with a great deal of caution and would want to be closely guided by the views of members as to how the issues should be addressed. A non-official, non-formal discussion paper on the issues pertaining to transitional arrangements had been circulated to facilitate discussion and to provide a starting point for the Sub-Committee's subsequent work on the matter. The paper narrowed down the areas which had to be looked at by the Sub-Committee. Given the rather late circulation of the paper, he did not expect a very substantial exchange at the present meeting on the broad and complex issues raised in it. However, he suggested that the paper be added to the list for vacation reading and reflection. In the meantime, the Secretariat would continue work on a paper which would identify the transitional issues that were agreement-specific within the context of the WTO Agreements. He noted that several of the issues in the discussion paper were not exclusive to one or the other Agreement. He proposed that the Sub-Committee revert to this part of its mandate at its next meeting when it could have a discussion with the benefit of this paper and the Secretariat Note. However, he did not want to prevent any delegation from speaking at the present time if it so wished, particularly if it had useful suggestions for tackling these issues.

55. The representative of Canada said that the discussion paper raised a number of important questions. One issue that had to be kept in mind was that some issues would be dealt with by the WTO, but some of the transition issues would also have to be taken up by the GATT Council and Tokyo Round Code Committees. This work needed to be coordinated, and within a very strict time-limit. In Canada's view, the transition questions were the top priority of this Sub-Committee.

56. The Chairman said that he was aware of the particular problem referred to by Canada as it had already been encountered regarding Anti-Dumping and Subsidies.

57. The representative of the European Communities said that as his delegation had received the discussion paper rather late, it was not in a position to comment substantially on it. The paper raised a number of important questions without attempting to provide replies. While all these matters were important, some might need priority treatment. The Sub-Committee should first focus on which of these issues it should deal with before day one because a solution was needed on day one, and which of the issues could be put off to a later stage. His delegation wished to come back to these matters. The Community agreed with Canada that the Sub-Committee's work had to be coordinated with what was going on elsewhere in the GATT and in the Tokyo Round Code Committees, as similar questions had been raised in these other bodies and there had to be consistency in the solutions found.

58. The Chairman agreed that many of the issues in the paper were very complex and would require a full-scale discussion.

59. The representative of Hong Kong said that the discussion paper was very thought-provoking. Hong Kong looked forward to the comprehensive paper to be prepared by the Secretariat after the

summer break. While his delegation would reserve its detailed comments on the present paper until the next meeting, it had some general observations. First, it was not clear exactly what a transitional arrangement was, but the idea seemed to be a transition from the old to the new. This then raised the question of whether the Sub-Committee was talking only about the goods area, because for Services or TRIPS there was no "old" from which to make a transition to a "new". Second, three principles should be kept in mind when the Sub-Committee reconvened in the fall: (1) the jurisdiction of the Sub-Committee, i.e. some of the issues before the Sub-Committee should be dealt with by the GATT Council or the respective Tokyo Round Code Committees; (2) existing rights and obligations of contracting parties under the GATT and under the Tokyo Round Codes should not be affected unduly by any transitional arrangement to be decided by this Sub-Committee; (3) no legal results of the Uruguay Round should be either reopened or affected; for example, paragraph 11 dealt with the transition provisions in the Anti-Dumping and Subsidies Agreements. In fact, this issue had already been negotiated and settled in the Uruguay Round negotiations, and there was thus no point in the Sub-Committee discussing it further.

60. The discussion paper seemed to have basically three large categories of issues. The first was legal, the second was institutional and the third was procedural. Probably the most controversial or sensitive area was the legal one. Paragraphs 1 to 8 of the paper dealt basically with the question of legal transition - namely, the rights and obligations of Members under the old and the new Agreements. It seemed that this would be the major area of work. For the institutional part, the paper pointed out that some of the existing bodies might continue to exist, and the Sub-Committee would need to consider whether bodies such as, for example, the Committee on Tariff Concessions should continue to exist. While less controversial than other issues, the Sub-Committee would also take up these questions. In the procedural area, there might be two or three categories: one large category was dispute settlement procedures. In Hong Kong's view, the transitional arrangement for dispute settlement procedures both in the Dispute Settlement Understanding and in the Ministerial Decision was quite clear already, and Hong Kong did not see where it needed to be supplemented. A second category might relate to notifications and it was his understanding that the three Contact Groups would be dealing with this matter. Another procedural issue was consultation requirements, which could be related to the legal aspects concerning substantive rights and obligations. His delegation would revert to many of the issues in the discussion paper with detailed comments after the summer break.

61. The Chairman said that the approach taken in preparing the discussion paper had been to throw up as many ideas as possible for delegations to think about; it was not meant to be prescriptive in any sense of the word, but merely thought-provoking. He agreed that there were issues where, for example in anti-dumping and subsidies, the system should in a sense also continue into the future. He suggested that the Hong Kong delegation outline some of the issues on which it had very clear views and convey these to the Secretariat.

62. The representative of Mexico said her delegation believed that this was one of the most important issues the Sub-Committee would discuss and that for this reason it should be given priority. Her delegation had a few preliminary comments on a number of points identified in the discussion paper. One related to the situation of rights and obligations of contracting parties in the GATT 1947 and the Tokyo Round Agreements. The paper dealt with this problem very summarily and did not touch on the important issues Mexico had in mind. Paragraph 7 referred to the rules of international law whereby the earlier Agreements would continue to apply to the extent that they were not incompatible with the new Agreement. Mexico had no problem with this assertion, nor with the recommendations made to the Sub-Committee with a view to reviewing the compatibility of relations between WTO Members that remained contracting parties to the GATT or to the Tokyo Round Agreements. The question that was not dealt with in the paper was that of the rights and obligations between two parties if one of the parties withdrew from the Agreement in question. How would pending rights and obligations be dealt with, especially with regard to the settlement of disputes? In Section III, institutional and procedural

matters were dealt with, but incompletely. There was no reference to the Ministerial Decision on the settlement of disputes, in which the Committees and Councils were invited to remain operational until pending disputes had been settled. There would obviously be a legal gap to the extent that WTO provisions would not apply immediately. As recommended in the Decision, her delegation believed that acting bodies should be kept operational, with possibly a number of previous procedural measures. Nothing was said in the paper about the transfer of previous rights and obligations established in earlier agreements. This was a real problem which the Secretariat should take up in its forthcoming Note.

63. The Chairman stressed that the intent of the discussion paper was to elicit the views of delegations on the issues raised and this explained why it was at a very tentative summary level. He suggested that delegations think deeply on the subjects raised and that those delegations who had already formulated some very clear views, like Hong Kong and Mexico, might wish to consider giving those views to the Secretariat for its consideration in the preparation of its Note. Inputs from other delegations would also be most welcome in this exercise.

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

D. Paragraph 8(c)(iv) of the Decision establishing the Preparatory Committee

65. The Chairman said that he had not yet begun any consultations with regard to the composition of the Textiles Monitoring Body. It was his intention to take up the matter again in the fall.

66. The Sub-Committee took note of this information.

E. Observer status

— Request by the FAO

67. The Chairman recalled that the Sub-Committee had considered this matter at its meeting on 4 July, and had agreed to revert to it at the present meeting. For the benefit of members, he read out the operative part of the FAO's communication, as follows: "As the Sub-Committee will be considering the question of the 'appropriate arrangements with respect to relations with other organizations referred to in Article V of the WTO Agreement' which includes 'intergovernmental organizations that have responsibilities related to those of the WTO', and given that FAO does have a series of important responsibilities related to the WTO, I would hope that the Sub-Committee will invite FAO to be an observer to its proceedings. The areas of FAO responsibility related to those of WTO include close working relationships on sanitary and phytosanitary matters, especially in relation to the new Committee on Sanitary and Phytosanitary Measures which expressly mentions collaboration with FAO/WHO Codex Alimentarius Commission and the International Plant Protection Convention, the Secretariats of which are mainly in FAO. These responsibilities also include collaboration on food aid issues, especially the involvement of our Consultative Sub-Committee on Surplus Disposal, which oversees the application of FAO's Principles on Surplus Disposal and the System of Usual Marketing Requirements, also cited in the Agreement on Agriculture. There are in addition areas of mutual interest on food security and environmental measures. In view of this, it is clear that FAO does have areas of responsibility closely related to those of WTO, and therefore, I hope that this request for observer status will be favourably received by the Sub-Committee."

68. The representative of the European Communities said that in the Community's view, there was no reason why the FAO should be dealt with in a different manner than the three organizations that had been invited to participate in the work of the Contact Group on Agriculture on an *ad hoc* basis. The communication from the FAO had in fact underlined that its interests lay in the Agriculture area. There was no justification for granting the FAO observer status in the Sub-Committee simply because

it had made a formal request therefor. There was no real reason to have the FAO sit through all the meetings of the Sub-Committee or of the Preparatory Committee since these bodies normally discussed matters that had little or nothing to do with agriculture. Agricultural discussions took place in the Contact Group on Agriculture, and the Community would not object if that Group felt it useful to have the FAO present for reasons of the latter's expertise on any particular matter. Accordingly, the FAO should not be granted formal observer status, although it could be present on invitation at meetings of the Contact Group on Agriculture if the latter so decided.

69. The representative of Argentina said that in principle, the request seemed to be a very straightforward one. However, it had to be considered in the context of the UN system. If other specialized agencies had been granted observer status, one was faced with the question of what distinction to make regarding the FAO.

70. The representative of the United States said that it was not really clear why the FAO would be excluded simply because it was interested in sitting in the Sub-Committee. It seemed from the comments of the Community that the problem was that the FAO had identified a specific interest, and that it was to be penalized for this, which seemed very strange. His delegation had not heard any compelling reasons or indication of the danger that having the FAO present, for whatever meetings it wanted to attend, would introduce to the Sub-Committee's deliberations or to the efficiency with which it conducted business. The United States continued to think that the FAO's request was sound: it had identified its interest, which seemed relatively specific and which seemed to indicate that it would not attend a meeting in which it was not interested. In the United States' view, this did not seem to be a basis for denying the FAO observer status.

71. The representative of Egypt supported the request for observer status by the FAO in the Sub-Committee and in whatever Committee would be dealing with agriculture and sanitary and phytosanitary regulations. The FAO had a close relationship with what the Sub-Committee was doing, especially in the field of agriculture, and there was no reason why it should not be included, especially as observers remained silent except when invited to speak.

72. The representative of Mexico said that her delegation considered the FAO to be an important agency which would doubtless help the Sub-Committee in its proceedings, especially with regard to matters specific to the FAO's competence. In principle, Mexico would not object to granting observer status to the FAO in the Sub-Committee. However, as a matter of principle, Mexico wondered whether the issue of observer status should not be decided upon across-the-board rather than on a case-by-case basis without having defined the basic principles governing observer status. Under the circumstances, perhaps the FAO should be given the sort of status which had been given to other bodies, i.e. consultative status. For reasons of practicality, the Sub-Committee should give the FAO the same treatment given to other organizations without this affecting the work of the Sub-Committee. The overall issue of observer status should be dealt with on a horizontal, across-the-board manner.

73. The representative of Australia said that his delegation supported acceptance of the request from the FAO to observe the proceedings of the work of the Sub-Committee.

74. The representative of India expressed surprise that there was any objection to the FAO becoming an observer, given that it was an organization with universal membership and that it had identified its areas of competence relevant to the responsibilities of the Agriculture Agreement. At the very least, since the FAO had been referred to in the Agriculture Agreement and in the Agreement on Sanitary and Phytosanitary Measures, it should be invited to the meetings of the Contact Group on Agriculture. Furthermore, because its area of competence went beyond what was being considered in that Contact Group, the FAO should be granted observer status in the Sub-Committee. At the same time, India agreed on the need to take a horizontal approach on the question of observer status. However, in view

of the fact that delegations appeared to be taking different positions as regards observer status in different bodies, India believed that the overall issue on a horizontal level should be addressed in the Preparatory Committee and not the Sub-Committee.

75. The representative of Morocco said that his delegation had always adopted a position of principle on the issue of observer status, which was to take a broadly inclusive approach. All organizations that expressed a specific interest, and this applied in the case of the FAO, should be invited as observers. In particular, in the work of the Contact Group on Agriculture, the FAO would have much to offer. Morocco did not see what could be achieved by excluding the FAO, and fully supported the FAO's request.

76. The representative of European Communities reiterated that the FAO had no particular expertise to offer in the work of this Sub-Committee. While the FAO was clearly a very useful and important organization, and had universal membership, this did not change the fact that it was an organization that dealt with sectoral aspects, namely agriculture and development. Before deciding on a more general horizontal approach with regard to observers, it would in a way prejudge the Sub-Committee's position if it were to admit the FAO now. This did not mean that the Community disagreed with the FAO's assertion, in its letter, that it had expertise in the areas mentioned therein. The Community would be willing to invite the FAO to the Sub-Committee's meetings when there was discussion on matters in which the FAO had expertise. That was not a reason to give the FAO, and thereby to practically all other sectoral organizations that so requested, observer status in the Sub-Committee. The Community's view was independent of the fact that it would be difficult to arrange seating for all if similar requests from, say, WIPO, UNEP and other sectoral organizations, were granted. As long as the Sub-Committee had not decided on the approach to take vis-à-vis requests of this kind, it should not prejudge its position by granting observer status to the FAO at this time.

77. The Chairman said that there appeared to be no objection to the FAO being invited to participate in the work of the Contact Group on Agriculture. Not to do so would, in fact, be an anomaly because subsidiary bodies of the FAO had been invited to participate. As regards the FAO's request for observer status, there appeared to be overwhelming support for the FAO to be admitted. However, in light of the Community's reservations, he would want to hold consultations on this matter.

78. The Sub-Committee took note of the statements and agreed that the FAO should be allowed to participate in the work of the Contact Group on Agriculture on an *ad hoc* basis.