

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

RESTRICTED

PC/IPL/M/6

21 October 1994

(94-2135)

SUB-COMMITTEE ON INSTITUTIONAL,
PROCEDURAL AND LEGAL MATTERS

MINUTES OF THE MEETING HELD ON 7 OCTOBER 1994

1. The Sub-Committee on Institutional, Procedural and Legal Matters held its sixth meeting on 7 October 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 said it was his understanding that the work on terms of reference for the WTO Committees on Balance-of-Payments Restrictions, on Budget, Finance and Administration and on Trade and Development being undertaken in the existing GATT Committees on these matters was almost complete, and that proposed terms of reference would be submitted to the Sub-Committee soon for consideration.

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

4. The Chairman, turning to terms of reference for the WTO Committee on Agriculture, said that agreement on the following text had been reached in the Contact Group on Agriculture: "The Committee shall oversee the implementation of the Agreement on Agriculture. The Committee shall afford members the opportunity of consulting on any matter relating to the implementation of the provisions of the Agreement."

5. The representative of Australia said that the question of terms of reference for the Agriculture Committee should have been resolved during the course of the Uruguay Round negotiations because seeking to resolve this issue more recently had led to concerns on the part of some that efforts were being made to reopen the negotiations or to expand the scope of the Agriculture Agreement. However, these concerns had been dispelled through consultations, and agreement had now been reached on the text read out by the Chairman. That text dealt with the ambiguities that would have been left unresolved had precise terms of reference not been agreed to, and built the confidence of all participants in this Agreement that the work of the Agriculture Committee would get off to a good and practical start.

6. The representative of the European Communities expressed satisfaction at the agreement on this text and at the overall spirit that had prevailed in coming to this agreement. He hoped that the confidence referred to by Australia would continue to evolve in the months to come when the Agriculture Agreement was put into effect.

7. The representative of Japan welcomed and supported Australia's statement. On the understanding that the terms of reference did not reopen the negotiations nor modify in any way the text of the Agriculture Agreement, his delegation joined in the consensus.

8. The representative of Egypt said that while his delegation welcomed the consensus on the text as read out by the Chairman, it wished to propose a small amendment thereto such that the last part of the first sentence would read: "... the implementation of the provisions of the Agreement on Agriculture and related Decisions", and in the second sentence the words "the provisions of the Agreement" would be replaced with "these provisions". His delegation believed that this was a minor amendment which would make the terms of reference clearer, and noted that the "related" Ministerial Decision was referred to in Article 16 of the Agriculture Agreement.

9. The Chairman asked whether Australia, which had taken the lead on this issue, wished to comment on Egypt's proposal.

10. The representative of Australia said that the Chairman had given the Contact Group on Agriculture the responsibility for reaching an agreement on this issue, and that the Contact Group had reached agreement on the text read out earlier by the Chairman.

11. The Chairman asked whether Egypt considered the amendment it had proposed to be absolutely necessary.

12. The representative of Egypt said that his delegation did not wish to block any consensus on the text that had already been approved in the Contact Group. However, while his delegation would not press for the addition of the words "and related Decisions" at the end of the first sentence, it would wish to see a reference in that sentence to the implementation of the "provisions" of the Agreement on Agriculture.

13. The representative of Argentina said that there had been ample opportunity, for all countries that so wished, to participate in the discussion on terms of reference for the Agriculture Committee. Fifty-six countries, including Egypt, had been invited to a meeting of the Contact Group the day before, at which consensus had been reached on the text read out by the Chairman. For many delegations, and particularly his own, this consensus had involved extremely important sacrifices. His delegation could not therefore accept any amendment to the text. However, if the Chairman so wished, debate on this matter might be suspended for a short while to allow his delegation, together with some others, to discuss this matter with Egypt informally.

14. The Chairman said he hoped the matter could be resolved without having to suspend the discussion. In his view, "the Agreement on Agriculture" at the end of the first sentence clearly covered all the provisions of the Agreement, and it would therefore be redundant to say "provisions of the Agreement". Accordingly, he would urge Egypt to reconsider its proposal.

15. The representative of Egypt said that the meeting of the Contact Group at which consensus on this text had apparently been reached had lasted only ten minutes, and her delegation had not had the chance to attend. Her delegation believed that adding "the provisions of the Agreement on Agriculture and related Ministerial Decisions" would make it clearer that the Decision regarding net food-importing countries, of which her country was one, was incorporated in the terms of reference. The word "provisions" was intended as a reference to Article 16 of the Agriculture Agreement, which required the Committee to monitor the follow-up to the Ministerial Decision on net food importing countries.

16. The Chairman said that the term "the Agreement" was intended to refer to the Agriculture Agreement as a whole, including Article 16 thereof, which itself referred to the follow-up to the Decision on net food-importing countries. He could not therefore see the need for a specific reference to be made.

17. The representative of Morocco said that Egypt had raised an important point as regards net food-importing countries. In his understanding, the Ministerial Decision concerning net food-importing developing countries was an integral part of the Agriculture Agreement. If confirmation of this interpretation were to be given, the text as read out by the Chairman should clearly be acceptable.
18. The Chairman said he could confirm that, for the purposes of the terms of reference, the Ministerial Decision was an integral part of the Agreement on Agriculture in terms of Article 16 thereof.
19. The representative of Korea said that his delegation joined in the consensus on the terms of reference on the understanding that these did not in any way lead to the reopening of the negotiations on the Agriculture Agreement.
20. The representative of Peru said that, as a way out of the impasse, the Chairman's interpretation, which implied that the Agriculture Committee would also deal with the Decision involving net food-importing countries amongst other decisions, could be formally reflected in the Sub-Committee's decision on this matter, without in any way changing the terms of reference themselves.
21. The Chairman asked whether Egypt would be prepared to join the consensus on the proposed text if he were to be placed on record as confirming that the term "Agreement on Agriculture" in the text included the provisions of Article 16 of the Agriculture Agreement.
22. The representative of Egypt replied in the affirmative.
23. The Chairman proposed that the terms of reference for the WTO Agriculture Committee be approved as follows, and that he be placed on record as confirming that "the Agreement on Agriculture" referred to in the terms of reference included the provisions of Article 16 of the Agriculture Agreement: "The Committee shall oversee the implementation of the Agreement on Agriculture. The Committee shall afford members the opportunity of consulting on any matter relating to the implementation of the provisions of the Agreement." (PC/IPL/1).
24. The Sub-Committee so agreed and took note of the statements.
25. The Chairman recalled that at the 26 September meeting of the Sub-Committee, the Community had made reference to a possible WTO Market Access Committee. It was his understanding that the Community wished to address this matter at the present meeting.
26. The representative of the European Communities recalled that at the 26 September meeting, his delegation had suggested that the GATT Committee on Tariff Concessions and the Technical Group on Quantitative Restrictions and other Non-Tariff Measures should be merged in the WTO into a Market Access Committee. In the course of that meeting, and in bilateral contacts with several delegations, the general reaction had been positive. In order to expedite the Sub-Committee's work, his delegation believed that it would be useful to propose terms of reference for the new Committee on the basis of those for the two existing GATT bodies. A text proposed by the Community had only recently been circulated, informally and in English, to members of the Sub-Committee. Therefore, while this meeting was probably not the appropriate time to discuss this proposal, his delegation stood ready to answer any questions or provide any further information on this matter.
27. The Chairman said that since the text was only available in English at present, he would request the Secretariat to have it translated into the other languages and distributed. Delegations would then have sufficient time to consider the proposal and perhaps to discuss in small groups. It could then be taken up at the next meeting of the Sub-Committee.

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

29. The Chairman, turning to the question of the Contact Groups, recalled that the Contact Group on TRIPS had agreed that, as a first step, the Secretariat would prepare a checklist of possible areas of cooperation between the WTO and WIPO, notably in regard to the notification of national legislations. In this regard, the Secretariat had been requested to seek informal contacts with the WIPO Secretariat to assist in the preparation of this paper, on the basis of which the Contact Group would discuss the question of cooperation between the two organizations, following which consultations would be initiated with WIPO, as foreseen in the TRIPS Agreement. At the Contact Group's second meeting on 23 September, strong support had again been expressed for establishing close and mutually supportive relations with WIPO, and there was widespread satisfaction with the initial contacts which he and the Secretariat had had with the WIPO Director-General of the WIPO and his staff. A preliminary discussion had been held on the basis of the resulting papers prepared by the Secretariat, and it had been agreed that WIPO representatives should be invited as observers at the next meeting of the Contact Group, on the understanding that this would not rule out the possibility of the Contact Group also meeting without the presence of observers if so desired. In accordance with the wishes of the Group, he had conveyed an invitation to the WIPO Director-General to send representatives to the next meeting of the Contact Group.

30. The Contact Group had also had a preliminary discussion on some ideas on how consultations between the two organizations might be organized. In this regard, the WIPO Director-General had informally raised with him the possible establishment of an informal joint consultative group open to any Member of either of the two organizations and jointly serviced by the two Secretariats. This issue had been discussed at length in the Contact Group, and the conclusion had been that the issue of joint consultations between the two organizations should be looked at carefully, and that it would be premature to embark on any such move at this stage. A copy of his letter to the WIPO Director-General on this matter had been circulated to all members of the Contact Group.

31. The issue of relations with the WTO has also been taken up by WIPO during the course of its Governing Bodies meetings which had ended earlier in the week, and at which the GATT had been present as an observer. The Governing Bodies had declared that the WIPO also desired the establishment of a mutually supportive relationship between the WTO and itself. To this end, they had agreed to set up an *ad hoc* working group open to all members of WIPO with the mandate of advising and cooperating with its Director-General in his contacts with the competent organs of GATT/WTO, discussing matters concerning possible cooperation between the two organizations, and considering the establishment of an *ad hoc* informal joint consultation group on all matters concerning possible cooperation. While WIPO had taken certain steps in this regard, the view in the Contact Group was that this should be given due consideration and a decision taken at an appropriate time.

32. Mr. Lundby (Norway), Coordinator of the Contact Group on Anti-dumping, Subsidies and Safeguards, said that the Contact Group's task was to discuss matters on which decisions would have to be taken before the entry into force of the Agreements on each of these subjects so as to ensure the smooth operation thereof. The Group had held two meetings recently, and had scheduled two more for 11 and 27 October respectively, in conjunction with the regular meeting of the Subsidies Committee. The Group's work thus far has concentrated on notifications of "green subsidies" with a view to identifying necessary elements to go into a notification format, as well as a thorough consideration of the question of the right balance between sufficient detail, on the one hand, and workability on the other. One more meeting would be devoted to this exercise, after which the Secretariat would produce a first draft for a possible format. The Contact Group would also tackle later other priority issues under the Subsidies Agreement, both concerning notifications and procedures for arbitration, pursuant to Article 8:5. Depending on the time available, issues would also be addressed under the Safeguards

and Anti-dumping Agreements where it would be preferable to make decisions prior to the entry into force of the WTO.

33. The representative of the United States said that in the two previous meetings of the Agriculture Contact Group, the United States and several other countries had raised the issue of reporting by state-trading enterprises. They were concerned that without proper transparency, it would be impossible to verify compliance by state-trading enterprises with the export subsidy disciplines in the Agriculture Agreement. The Understanding on the Interpretation of Article XVII in the Uruguay Round Agreement already contained enhanced reporting requirements for state-trading enterprises and established a working party to review notifications and counter-notifications on state-trading activities. Several countries had suggested that the Sub-Committee would be the more appropriate forum in which to pursue their interests, and the United States agreed because state-trading was not an issue only in the Agriculture sector. The United States believed that the guidelines on reporting that were referred to in the Understanding were broad enough to address its concerns. However, it wished to seek greater precision in the guidelines particularly in respect to price reporting. It was essential to provide for proper monitoring of the activities of state-trading enterprises, an issue which would become ever more critical in the future with the accession to the WTO of countries that made extensive use of state-trading. The United States believed that this type of precision would be necessary very soon after the date of entry into force of the WTO Agreement and that the working party established under the WTO Agreement would greatly benefit from a preparatory discussion. The United States therefore requested that the Chairman ask the Contact Group in the Rules area to take up this issue at an early date, and wished to see a thorough discussion in that forum of notification procedures, notification formats and the functioning of the working party on state-trading.

34. The representative of Canada said his delegation believed that the procedures laid down in the Understanding on Article XVII were sufficient, and did not see the necessity of reviewing, prior to the entry into force of the WTO, what was an already adequate procedure. The terms of reference for the working party on state-trading were broad enough to undertake a thorough review of all existing notification obligations of Members under the Agreements in Annex 1A of the WTO Agreement, with a view to simplifying, standardizing and consolidating these obligations to the greatest extent practicable as well as to improving compliance and transparency. Canada therefore did not see the necessity to raise this issue in a Contact Group when that Contact Group had more than enough to do at present.

35. The representative of Argentina supported the United States' proposal. Argentina believed that progress should be made on developing detailed guidelines on the various aspects of the Understanding on Article XVII.

36. The representative of Japan supported the United States' proposal.

37. The representative of Australia said that his delegation saw no difficulty in having the notification procedures under the Understanding on Article XVII discussed and kept under constant review. However, as the United States had itself stated, the Understanding provided for its own internal review procedures to examine the effectiveness and acceptability of the notification arrangements spelled out therein. There was also a separate Ministerial Decision on Notification Procedures which would keep all the notification procedures under the Multilateral Trade Agreements of the WTO under review. In this context, one had to keep in mind that the Sub-Committee had a lot of work to do in a very short time. Australia shared the view of many others that the Sub-Committee should focus on work that was required to be completed in order to bring the WTO and the Multilateral Trade Agreements into proper effect. Australia believed that clear procedures had been provided for the review of notification procedures under Article XVII to take place after the WTO came into effect, and could not see what more needed to be done before then.

38. The representative of the European Communities said that the United States' proposal merited consideration.

39. The Chairman noted that the majority of the statements supported the discussion of this matter in the Contact Group in the Rules area, and asked whether Canada wished to reconsider its position in light of this.

40. The representative of Canada said his delegation maintained that the Understanding on Article XVII and the Ministerial Decision on Notification Procedures were entirely adequate to the needs that had been identified by the United States. Canada could not see what purpose would be served by discussing this matter at the present time when a working party review process would come into effect following the entry into force of the WTO.

41. The Chairman suggested that the Sub-Committee revert to this matter at a later date. In the meantime, he would hold consultations with the United States and Canada.

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

(ii) Rules of procedure for WTO bodies

43. The Chairman recalled that at the 26 September meeting of the Sub-Committee, delegations had been invited to submit inputs in writing concerning the draft Rules for the Ministerial Conference and the General Council, respectively. As he had indicated at that meeting, in light of the contributions received, consideration would be given as to the need for the setting up of a drafting committee. The Secretariat was presently checking with the respective delegations that had submitted proposals with a view to resolving possible conflicts in the various submissions, and hoped to be able to produce revised draft texts the following week. In light of this, he did not believe there was a need to set up a drafting group at this stage, and suggested that the revised draft texts be considered at the next meeting of the Sub-Committee with a view to completing work on this part of its mandate. Meanwhile, if other delegations wished to contribute to this process, they were invited to do so.

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

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

(i) Arrangements for effective cooperation with other inter-governmental organizations

45. The Chairman said that he wished to leave the question of the WTO's relations with the UN to a subsequent meeting, if necessary. As to relations with the IMF and the World Bank, he recalled that at an informal meeting of the Sub-Committee held the day before, the Director-General had reported on his preliminary contacts with the Heads of the IMF and the World Bank. At that meeting, the Secretariat had been requested to prepare a paper identifying the arrangements that would have to be put in to place with these organizations by 1 January 1995. It was his understanding that this paper would be made available in about ten days. There had been a suggestion that once the paper was ready, a representative of the CONTRACTING PARTIES together with a Secretariat official could visit those organizations to discuss the points raised in the paper. Depending on the results, and following further consultations, work on draft textual arrangements could then commence. As regards functional relations with other organizations that had been mentioned at previous meetings of the Sub-Committee, he would welcome inputs from delegations.

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

(ii) Observer status for international organizations

47. The Chairman suggested that the Secretariat revise document 2035 on the basis of the discussion at the 26 September meeting and any other suggestions that delegations might wish to make at the present meeting. The Sub-Committee would also need to consider separate guidelines for observer status for governments, based on those that were presently followed by the CONTRACTING PARTIES to the GATT 1947. At a minimum, some adaptation of the language of those guidelines would be needed to make them applicable to the WTO. Both sets of guidelines would be needed to complete the Rules of Procedure currently envisaged for the Ministerial Conference and the General Council.

48. The representative of Canada said that his delegation had comments to make on the guidelines in document 2035, and would submit them in writing to the Secretariat so as not to take up the time of the Sub-Committee.

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

C. Transitional Arrangements

50. The Chairman underlined the importance and urgency of reaching agreement on the type of arrangements that would be needed as this was an area on which the Preparatory Committee would have to make a recommendation to the Special Session of the CONTRACTING PARTIES to the GATT 1947 at the Implementation Conference. He was continuing his plurilateral contacts on this matter and intended to continue this process in the following weeks.

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

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

52. The Chairman recalled that at its meeting on 26 September, the Sub-Committee had established a Contact Group on Textiles. He had indicated at that meeting that he would undertake consultations on the chairmanship of the Group. Following these consultations, he announced that Mr. M. Al-Fattah (Egypt) had agreed to serve as Chairman.

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

E. Article 4.3 for the review procedures under the Agreement on Preshipment Inspection

54. The Chairman drew attention to a background note by the Secretariat on the implementation of Article 4 of the Agreement on Preshipment Inspection (PC/IPL/W/8). As that note indicated, Article 4 of the Agreement on Preshipment Inspection (PSI) foresaw a role for two private organizations representing, respectively, PSI entities and exporters, although the Agreement designated no specific organizations for this purpose. However, as all were aware, during the negotiations on the Agreement, the International Federation of Inspection Agencies (IFIA) and the International Chamber of Commerce (ICC) had indicated their willingness to undertake these responsibilities for the foreseeable future. This had been accepted by the negotiators although it had not been formalized. The IFIA and ICC were actively engaged in preparations for the setting up of the independent entity that would administer the review procedures. It would, therefore, seem necessary to formalize the arrangement in some way, for example, in an exchange of letters between these organizations and the WTO, and

to do so as soon as possible given that the independent entity should be operational from the entry into force of the WTO Agreement.

55. The independent entity was established under the terms of Article 4 of the Agreement, and would enjoy the same privileges and immunities as those enjoyed by other WTO bodies by virtue of Article VIII of the WTO Agreement. Given the special case of this entity, as it was constituted by private organisations, it appeared appropriate to confirm this also in an exchange of letters between the WTO on the one hand and the ICC and IFIA on the other. He wished to note that confirmation of the independent entity's status under the WTO had no budgetary implications for the WTO. The ICC and IFIA had accepted, during the negotiations, the wishes of participants that, in view of the general expectation that the case-load of the independent entity would not be very great, the entity should be financed jointly by the ICC and IFIA and that the situation could be reviewed after a trial period of two years; accordingly, the ICC and IFIA were proceeding with preparations for the implementation of the independent review procedures. In conformity with Article 4(g) of the Agreement, independent review panels would apportion the costs of an independent review among the parties to a dispute based on the merits of the case. In light of the above, he proposed that the Sub-Committee request the Secretariat, in consultation with interested delegations and with the IFIA and ICC, to prepare a draft proposal for formalizing, in writing, the status of the ICC, the IFIA and the independent entity for consideration by the Sub-Committee.

56. The representative of Canada said that delegations had only recently received the note by the Secretariat. In view of the fact that the independent entity would enjoy the same privileges and immunities as enjoyed by other WTO bodies, the draft proposal to be prepared by the Secretariat should specify where this applied.

57. The Chairman acknowledged that this matter had only recently been brought to the attention of Members, and said that if they wished to give it further consideration, they would be free to do so. However, he had wanted to set the process in motion at this meeting. He was certain that the Secretariat, in conducting consultations, would consult with as many interested delegations as possible.

58. The representative of Japan indicated his delegation's interest in this matter, particularly on the question of privileges and immunities. Japan believed that the independent entity was something different from what was covered under Article VIII of the WTO Agreement, and wished to have a fuller discussion on this matter.

59. The Chairman said that once the Secretariat had completed its consultations, the draft proposal resulting therefrom would be brought to the Sub-Committee for its consideration. A fuller discussion could be held at that time.

60. The Sub-Committee took note of the statements and agreed that the Secretariat be requested, in consultation with interested delegations and with the IFIA and ICC, to prepare a draft proposal for formalizing, in writing, the status of the ICC, the IFIA and the independent entity, for consideration by the Sub-Committee.

F. Issues relating to the Standing Appellate Body

61. The Chairman said that he wished to draw attention to some issues relating to the Standing Appellate Body that the Sub-Committee would have to address soon. While it was true that there would be some time before the Appellate Body was called into action under the WTO, certain issues required attention now in order for necessary decisions, for example on budgetary implications, to be taken this year. These issues related, *inter alia*, to the profile of the seven persons to be appointed to serve

on this Body - namely, whether they would be purely jurists or jurists with a knowledge of trade matters - , whether they should be appointed on a permanent or on a part-time basis, where they should be located - whether in Geneva or not, and if in Geneva, whether in the same building as the Secretariat - and the type and amount of support staff they should be provided with. He wished simply to raise these issues at the present meeting and to have delegations reflect on them. He would intend to revert to them at the next meeting of the Sub-Committee.

62. The representative of Norway, speaking on behalf of the Nordic countries, supported the Chairman's raising of this issue. Depending on the quality and the level of persons to be appointed to the Appellate Body, it would not be simply a question of selecting these persons, but also a question of their freeing themselves from other commitments, which might take some time. It would therefore be best to address this matter sooner rather than later. As to the profile of the appointees, this was more or less provided in Article 17:3 of the Dispute Settlement Understanding, which also stipulated that these persons should be "available at all times and at short notice". As to their independence, the Nordic countries' preliminary view was that the Appellate Body should not be serviced by the same persons that serviced the panel on a particular dispute.

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