

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

RESTRICTED
PC/IPL/M/11
31 December 1994

(94-2946)

**SUB-COMMITTEE ON INSTITUTIONAL,
PROCEDURAL AND LEGAL MATTERS**

MINUTES OF THE MEETING HELD ON 6 DECEMBER 1994

1. The Sub-Committee on Institutional, Procedural and Legal Matters held its eleventh meeting on 6 December 1994 under the Chairmanship of Mr. K. Kesavapany (Singapore).

A. Transitional Arrangements

2. The Chairman drew attention to non-paper number 3044 on the transitional coexistence of the GATT 1947 and the WTO Agreement. It had been understood that the draft decision proposed in this non-paper would form part of a package that would include the results of the ongoing consultations on the issue of the Tokyo Round Codes. He proposed that this matter therefore be taken up when the consultations on the latter issue had been concluded.

3. The Sub-Committee so agreed.

4. The Chairman then drew attention to non-paper 3042 concerning a draft decision on the avoidance of procedural and institutional duplication. If the GATT 1947 was to co-exist with the WTO Agreement for a stipulated period, WTO members would have to make the same notifications twice, once as WTO members and again as GATT 1947 contracting parties. The need to make notifications as GATT 1947 contracting parties arose from the obligations that the contracting parties had with respect to other contracting parties that were not members of the WTO. Having to make duplicate notifications would be a waste of resources, both for governments and the Secretariat. In view of this, it had been proposed that notifications made under the WTO should be deemed also to be notifications under GATT 1947. The same applied to those cases in which a government was subject to notification obligations under both the WTO and the GATT 1947 Agreements. Two exceptions had been provided for. First, if a government wished to make a notification separately to the two bodies, it might do so. Second, if in specific areas, separate notification procedures were agreed to, these would be applicable. Similarly, a case could be made for the avoidance of separate meetings of bodies under the GATT 1947 and the WTO to consider the same measures. In some cases there might be a problem as different procedures might apply. However, in many cases it might be advantageous to hold the meetings jointly or consecutively. The proposal, therefore, was that the bodies identified in paragraph 2 of document 3042 might meet jointly or consecutively as appropriate. Before submitting the text of the draft decision for approval, he proposed that in the first paragraph following the preambular paragraph, after the first mention of GATT 1947 the following words be added: "and of the Tokyo Round Agreements". He also proposed that the following be added at the end of the first sentence of numbered paragraph 3: ", with the corresponding WTO bodies". The proposed changes were intended to make the text more consistent, and did not imply changes in substance. He proposed that the text of the draft decision in document 3042 be approved with the amendments proposed.

5. The Sub-Committee so agreed.

6. The Chairman then drew attention to non-paper number 3043 on participation in meetings of WTO bodies by certain signatories of the Final Act. As recognized in the preambular section of this paper, some signatories of the Final Act that were eligible to become original Members of the WTO had not been able to complete their domestic procedures for the approval of the WTO Agreement before its entry into force. It also recognized that some of the Ministerial Decisions included in the Final Act already envisaged the participation of non-members in negotiations initiated under them. Signatories that were unable to accept the WTO Agreement with effect from the date of its entry into force would have to accept the Agreement eventually with whatever changes were made between the entry into force and the time at which they finally accepted the Agreement. It seemed only right, therefore, that they should be given a voice in the deliberations of WTO bodies before they finally accepted the Agreement. However, to safeguard the decision-making rights of WTO members, such signatories were being excluded from participation in decision making itself. They would not have a right to vote and their views would not be taken into account when deciding on whether there was a consensus on a particular matter. The proposed decision, therefore, struck a balance between the concerns of WTO members on the one hand and the signatories of the Final Act that were unable to accept the Agreement before the entry into force on the other. Before submitting the text of the proposed decision for approval, he proposed that in the title and in the second last paragraph of the preambular text "signatories of the Final Act" be changed to read "certain signatories of the Final Act". Also, in the first paragraph following the preambular text, the square brackets in the first line should be replaced by the words "seven months". In the third line of the same paragraph, after the words "Uruguay Round that are", the following text should be added: "contracting parties to the GATT 1947 as of the date of this Decision and are". He then proposed that the text be approved with the amendments proposed.

7. The Sub-Committee so agreed.

B. Appointment of officers to WTO bodies

8. The Chairman drew attention to a communication from the Chairman of the GATT 1947 CONTRACTING PARTIES on proposed guidelines for appointment of officers to WTO bodies (document 3014), which had been agreed to in informal consultations conducted by the latter.

9. Mr. Szepesi (Hungary), Chairman of the GATT 1947 CONTRACTING PARTIES said he wished to make some clarifications for the record with respect to certain elements contained in the guidelines. First, it was the understanding of delegations that the overall balance of representation referred to in section 2 of the guidelines should be interpreted to reflect a balance between developed and developing countries. Second, on section 3, while keeping in mind the provisions in Article IV:3 and 4 of the WTO Agreement, it was considered preferable during the initial stage of operation of the WTO to have a different chairperson for the General Council, the Dispute Settlement Body and the Trade Policy Review Body, respectively, on the understanding that the options provided for in Article IV of the WTO Agreement were preserved. Third, while section 4 of the guidelines stated that WTO bodies under Groups 1 and 2 should be chaired by Geneva-based heads of delegations, it was agreed that the Committee on Trade and Development and the Committee on Trade and Environment should continue to be chaired also by Geneva-based heads of delegations. Finally, on section 5, given the large number of bodies for which chairpersons had to be appointed, it was felt that vice-chairpersons should only be appointed in circumstances requiring such a post and on the presumption that if the chairperson suffered an impediment or relinquished a post, the vice-chairperson would succeed to that post.

10. The representative of Chile said that his delegation had seen the proposed guidelines only the day before, and wished, if this were acceptable to others, to propose an amendment to the text in the first sentence of section 4 concerning the level of representation so as to provide that chairpersons for

bodies under Group 2 would be appointed from among Geneva-based heads of delegations only "in so far as possible". Group 2 contained some very specialized bodies, and it was possible that persons with the required degree of technical expertise might not necessarily be found from among the heads of Geneva-based delegations, in particular from among delegations that were relatively small in size, such as was the case sometimes for developing country delegations in Geneva.

11. The Chairman of the GATT 1947 CONTRACTING PARTIES regretted that Chile had been unable to indicate its concern earlier. The text in section 4 had been carefully negotiated and intended to reflect a balance between different interests. He drew attention to the last sentence of that text, which read: "Non-residents may be appointed in exceptional circumstances where the necessary expertise can only be found in capitals." He was confident that this sentence would meet the concern raised by Chile, and that Chile might therefore reconsider its position and accept the text as it stood.

12. The representative of Chile said it was precisely the sentence referred to by the Chairman of the GATT 1947 CONTRACTING PARTIES that was causing his delegation some concern, in that while it provided for non-residents to be appointed in exceptional circumstances, it did not allow for non-heads of delegations to be appointed in such cases.

13. The Chairman asked if Chile had some draft language to suggest.

14. The representative of Chile suggested that the words "if possible", separated by commas, be added to the first sentence of the text in section 4, between the words "appointed" and "from".

15. The Chairman of the GATT 1947 CONTRACTING PARTIES reiterated that the present text of section 4 represented a very delicate balance of certain concepts. It had been made clear by each delegation in his consultations that for bodies under Groups 1 and 2 the main rule should be that chairpersons should be appointed from among Geneva-based heads of delegations. He would therefore suggest that this basic concept be kept untouched. The last sentence in section 4 should give satisfaction, although admittedly partial, to Chile. He would note that a number of other delegations were not fully satisfied with the present formulation for just the opposite reasons, and he would therefore urge once again that the very delicate balance be preserved.

16. The Chairman said that the Chairman of the GATT 1947 CONTRACTING PARTIES had consulted a number of times on this matter, and that the resulting text had had to be very delicately drafted. Tampering with any part of it ran the risk of unravelling the whole text, and there were barely twenty-four hours left in which to complete all the work under the Sub-Committee. He therefore urged Chile to reconsider its position and, if at all possible, to agree to the present formulation, keeping in mind that the last sentence of section 4 could take account of its concerns.

17. The representative of Chile said that, as a final effort, he would urge that a reference be made to non-heads of delegations in the last sentence of section 4, which would permit, in exceptional circumstances, either non-residents or persons who were not heads of delegations to be appointed as chairpersons. He hoped that the Chairman of the GATT 1947 CONTRACTING PARTIES would not consider this change as altering significantly the balance of the text. If this were not the case, Chile would go along with the present text in light of the clarification given by the Chairman of the CONTRACTING PARTIES.

18. The representative of India joined the Chairman in appealing to Chile to reconsider its position, in view of the heavily negotiated nature of the text in question. India had had serious problems with the last sentence of section 4 because it had considered it inconceivable that with the expected WTO membership of more than a hundred governments, it would still be possible that expertise could not be found among Geneva-based heads of delegations. India had therefore not wished to see this text

included at all. It had, however, accepted the text in a spirit of consensus and compromise and in view of the fact that there might be some bodies under the WTO which might call for highly technical expertise. For this reason, India attached importance to the term "in exceptional circumstances" in the present text.

19. The Chairman of the GATT 1947 CONTRACTING PARTIES said he wished to join again in the appeal to Chile to reconsider its position. As regards Chile's most recent proposal, he would note that while the first sentence of section 4 referred only to heads of delegations, the second sentence, in respect of bodies under Groups 4, 5, 6 and 8, referred to either heads of delegations or officials of delegations. If one departed, in the last sentence, from the main rule that only heads of delegations be appointed, then it would create a slightly confusing situation. Therefore, the addition proposed by Chile in the given specific context would impart further confusion to a text that was already kept intentionally ambiguous.

20. The Chairman said that since Chile had graciously indicated that if its final effort did not find favour it would go along with the present text, he would now propose that the text in document 3014 be approved.

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

C. Issues relating to the Standing Appellate Body

22. The Chairman said that agreement had been reached in informal consultations on a set of recommendations to the WTO on issues relating to the Appellate Body, which had been circulated in document PC/IPL/W/15. It had been brought to his attention that certain rectifications should be made to that text in order to ensure that the language agreed at the most recent informal consultation was duly reflected. Accordingly, in paragraph 13, third sentence, the phrase which read "forwarded to the Director-General" should be modified to read "forwarded by delegations to the Director-General". Also, in paragraph 14, the second sentence should be modified to read as follows: "Matters such as guaranteeing the rotation required by the DSU and facilitating, if necessary, communications within the Appellate Body should form part of the working procedures."

23. The representative of the United States said his records showed that it had been agreed in the consultations that the words "if necessary" in the second sentence of paragraph 14 should be inserted after the words "facilitating communications".

24. The representative of Norway said that while his delegation did not have a firm opinion as to where the words "if necessary" should be placed in this sentence, it wondered if their placement before or after the word "communications" would make a difference.

25. The representative of the United States said that this would indeed make a difference in the text.

26. The representative of Japan said that his records confirmed the United States' view of the agreement on this text.

27. The Chairman proposed that the text in the second sentence in paragraph 14 be further amended as indicated by the United States, and that the recommendations in PC/W/15, as amended at the present meeting, be approved.

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

D. Rules of ethical conduct for the settlement of disputes

29. The Chairman noted that Mr. Armstrong (New Zealand) had reported at an informal meeting the day before that his consultations on this subject had been progressing well. As he had stated on previous occasions, work on this subject would be taken as far as it could in the time that remained for the Preparatory Committee to conclude its work. An arrangement would have to be found to reflect the work that had been done thus far in the final report of the Preparatory Committee to the WTO. In the meantime, Mr. Armstrong would continue his informal consultations such that by the time of the WTO's entry into force, work on this subject would have been advanced further.

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

E. Paragraph 8(b)(iii) of the Decision establishing the Preparatory Committee
- Observer status for international intergovernmental organizations

31. The Chairman recalled that at the Sub-Committee's meeting on 18 November, it had been mentioned that until guidelines for observer status for international intergovernmental organizations were agreed upon, the General Council of the WTO might invite as observers to its meetings the four organizations - namely, the IMF, World Bank, UN and UNCTAD - that were presently invited in that capacity to meetings of the Preparatory Committee. He had given this matter some consideration, and wished to propose that pending the adoption of agreed guidelines by the WTO, the Sub-Committee recommend that representatives of the four above-mentioned international organizations be invited as observers to the first meeting of the General Council of the WTO.

32. The Sub-Committee so agreed.

F. Outstanding Issues

33. The Chairman noted that two issues still remained outstanding. The first was the issue of the Textiles Monitoring Body. It had been his impression that a proposal put forward by the Chairman of the Contact Group on Textiles had received a great degree of support, and that some further work would have ensured a final satisfactory result by the time of the present meeting. However, his consultations that morning had indicated that the gap was still quite wide, and both he and the Chairman of the Preparatory Committee, whom he had consulted earlier that evening, were deeply concerned at this state of affairs which could have serious implications for the Implementation Conference. They both intended to intensify their consultations between then and the meeting of the Preparatory Committee the following day to see if an agreement acceptable to all could be reached. He urged all delegations to view this matter very seriously, and said that whatever its merits or demerits, a package acceptable to all delegations would have to be found. The second outstanding issue was the question of transitional arrangements relating to the Tokyo Round Codes, on which he hoped to be able to conclude consultations the following day on the basis of certain responses that he was waiting for.

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