

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

RESTRICTED
PC/IPL/M/5
21 October 1994

(94-2133)

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

MINUTES OF THE MEETING HELD ON 26 SEPTEMBER 1994

1. The Sub-Committee on Institutional, Procedural and Legal Matters held its fifth meeting on 26 September 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 that he had hoped to be able to put aside this item on the Sub-Committee's agenda as soon as possible. At the same time, however, he was aware that there was an outstanding issue with regard to terms of reference for the Committee on Agriculture.

3. The representative of Australia said that his delegation had hoped to be able to settle this matter without controversy at the present meeting. Among all the committees in the WTO framework, only the Agriculture Committee required agreement on specific terms of reference, since such terms for other committees were already included in the WTO texts. In the context of the negotiations in 1993 to finalize the Uruguay Round package, all had agreed that specific terms of reference for the Agriculture Committee would be left aside in order to allow time for the contentious political issues that had to be settled in relation to the Agriculture package. However, this issue was still under discussion in the Agriculture Contact Group without any consensus on it. A number of elements of the Agriculture Agreement required careful monitoring. There was, for example, the operation of the special safeguard provision in relation to imports of tariffied items; the monitoring and surveillance of specific commitments on market access, domestic support and export subsidies under Articles 6,7,8 and 9 of the Agreement; the prevention of circumvention of export subsidy commitments in Article 10; the disciplines to be observed on export prohibitions and restrictions in Article 12; the operation of Article 13 on due restraint; and finally, Article 16, dealing with the effect of the Agreement on the least-developed and net food-importing countries, which needed to be regularly monitored. The Agriculture Committee had to have a broad mandate to effectively monitor and implement all these provisions. Article 17 of the Agreement simply provided for the establishment of a Committee without providing the necessary terms of reference for it to be able to effectively monitor and implement all aspects of the provisions of the Agreement. He hoped that agreement on this issue could be reached quickly in the context of the Contact Group on Agriculture.

4. The Chairman asked whether Australia was concerned that if specifics were not mentioned in terms of reference for the Agriculture Committee then it would not subsequently be able to consider these issues.

5. The representative of Australia said that there was a lacuna in the text of the Agriculture Agreement in that the only specific Article which referred to functions of the Agriculture Committee, Article 18, dealt with the specific market access and domestic support and export subsidy commitments.

Most of the other Articles which also required administration and monitoring did not have any specific reference to a role for the Agriculture Committee in their administration.

6. The representative of Argentina said that consensus on terms of reference for the Agriculture Committee in the Contact Group had not been possible due to a minor detail. He underlined that terms of reference for this Committee were needed not only in relation to provisions in various Articles of the Agriculture Agreement in addition to Article 18, but also in view of the second and third preambular paragraphs which set out the long-term objectives of the agricultural reform process and were very important. Furthermore, Argentina believed that the Committee should be one of the fora associated with the negotiations for the continuation of the reform process which was mentioned in Article 20. In the Sub-Committee's discussions on this matter thus far, his delegation had not heard any objections to the reasons that had been given as to why terms of reference for this Committee were needed, and therefore could not understand why agreement was not possible.

7. The representative of Chile expressed support for the statements by Australia and Argentina. Chile believed it was necessary to have terms of reference for the Agriculture Committee and that these should be sufficiently broad.

8. The representative of Uruguay echoed the views expressed by Australia and Argentina. There was a need to avoid any doubts and disagreement in future as to the Agriculture Committee's competence, and Uruguay hoped that agreement would be reached on this matter as soon as possible.

9. The representative of New Zealand associated his delegation with Australia's statement. The Agriculture Committee had not been intended to be the only committee in the WTO without terms of reference. It had always been assumed in the negotiations that this would be addressed at this time, together with the issue of rules of procedure. It was important not to allow this Committee to come into existence with doubts as to its precise functions, and to resolve this matter quickly, bearing in mind that short and simple terms of reference were needed. The alternative would be a long and protracted negotiation on trying to include in the terms of reference all aspects of what the Committee would do, which might take months. New Zealand believed that the proposed terms of reference before the Agriculture Contact Group, which were short and generic, were suitable. It was important to ensure that the Agriculture Committee could operate with a broad mandate.

10. The representative of Brazil associated his delegation with the statements by Australia and New Zealand. All other committees had terms of reference, and Brazil did not see clearly why the Agriculture Committee should not. The simpler the terms of reference the better, as this would mean they would be broader and the discussion on them shorter. His delegation hoped that this matter would be resolved quickly.

11. The representative of Thailand, speaking on behalf of the ASEAN countries, echoed the views of Australia and other Cairns Group members on the need to settle this issue. Given the various requirements on the Agriculture Committee to monitor the implementation of the Agriculture Agreement, the ASEAN countries believed it necessary to establish appropriate terms of reference that would give the Committee a clear mandate to carry out its functions. It was important that this issue be resolved as quickly as possible, and their countries would agree to the proposal put forward by Australia.

12. The Chairman asked if Australia was tabling a formal proposal at this stage.

13. The representative of Australia said that the terms of reference proposed in the Agriculture Contact Group were as follows: "The Committee on Agriculture shall carry out the functions necessary to implement the provisions of the Agreement on Agriculture and the furtherance of its objectives. The Committee shall also provide a regular forum for consultations." These were simple, generic

and non-threatening terms of reference of the kind that every committee in the WTO Agreement had. The reluctance being encountered to such a broad, general text was difficult to understand.

14. The representative of the European Communities said that Article 18 of the Agriculture Agreement provided a clear definition of the responsibilities of the Committee that was established under Article 17. Article 18 was broad enough to cover everything that would fall under the concept of "monitoring" to be undertaken by the Committee. It therefore seemed to him that the discussion on devising terms of reference for the Committee was superfluous.

15. The Chairman asked whether, in view of the widespread support for having general terms of reference for the Agriculture Committee, and if these did not seem to be threatening or injurious to any particular interest, the Community had any fundamental objection thereto. If not, he wondered whether the Community could not try to accommodate the views of a number of delegations in this instance as a gracious act on its part.

16. The representative of the European Communities said it all depended on what one called a broad or widespread support. The number of speakers in this discussion could not alone determine who was right and who was wrong.

17. The Chairman said that if a sufficient number of members believed that no harm would be done by having general terms of reference, and others believed that the existing provisions were sufficient, it should be possible to work out something that assuaged everyone's concerns.

18. The representative of Switzerland said he was surprised at the debate in the Sub-Committee because the Agriculture Contact Group had held an initial discussion on this matter on the basis of a proposal, and all seemed to be in favour of brief and precise terms of reference. He believed that that discussion should be continued, since it had only just been begun, and had not by any means been concluded. This should not be seen as an intention to delay in any way the definition of terms of reference for the Agriculture Committee. While Switzerland wished to see a rapid conclusion to this matter, a little more time was needed for further discussions, and he reiterated his delegation's willingness to continue this discussion.

19. The representative of Japan said it was unfortunate that the drafters of the Agriculture Agreement had not given thought to including an Article defining the terms of reference for the Agriculture Committee. However, he believed that the Agreement had clearly stipulated the tasks of the Committee in different Articles, and that these provisions were sufficiently precise and broad as to permit any discussion related to the implementation of the Agriculture Agreement. Japan therefore did not see an absolute need to define terms of reference. The Chairman had suggested defining such terms of reference if there was no harm in doing so. However, as a result of the discussions in the Contact Group, Japan was concerned that the intent of some of the parties in defining these terms of reference was coming perilously close to reopening negotiations on the Agreement itself.

20. The representative of the United States associated his delegation with the statements by Switzerland and Japan.

21. The representative of Korea said that while his delegation was not against enabling the Agriculture Committee to perform its functions, these functions were provided for in the various parts of the Agriculture Agreement itself. However, this matter was presently being discussed in the Contact Group, and his delegation hoped that a solution would be found in that forum.

22. The representative of Canada associated his delegation with Australia's statement.

23. The Chairman said that while he did not want to preempt the work of the Agriculture Contact Group, he considered it necessary for the Sub-Committee to understand why after three to four weeks it had not been possible for the Contact Group to take a position on the question of terms of reference for the Agriculture Committee.

24. The representative of Australia noted with satisfaction that Switzerland was not opposed to broad, generic terms of reference for the Agriculture Committee, and that the United States agreed with Switzerland's statement. As to the Community's statement, it was true that Article 18 of the Agreement referred to the role of the Committee in monitoring the implementation of particular commitments. However, this only concerned one aspect of the Agreement. Other aspects of the Agreement that he had referred to earlier were not mentioned in Article 18. He agreed with the Chairman that it would be a gracious act on the part of those that were reluctant to see this happen, to agree to generic, non-threatening terms of reference for this Committee similar to those that existed for all the other committees. Australia was not seeking to change the text of the Agreement to obtain this.

25. The representative of Argentina said that Australia's comment about not wanting to change or modify the Agreement on Agriculture was important. If Article 18 had indeed covered all aspects of the Committee's work, then terms of reference would not be needed. His delegation agreed with Switzerland that discussion be continued on this issue in the Agriculture Contact Group to see whether the proposed terms of reference were a threat or simply a matter of internal consistency.

26. The Chairman said he would urge the Agriculture Contact Group to address this issue with a view to its resolution by the time of the next meeting of the Sub-Committee, which was scheduled for 7 October.

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

28. The Chairman, turning to the question of the status in the WTO of the GATT 1947 Committee on Tariff Concessions and the Technical Group on Quantitative Restrictions and other Non-Tariff Measures, said that, as he had indicated at the 14 September meeting of the Sub-Committee, among the ideas put forward informally to him on this subject was the possible merger of these bodies in the WTO to fulfil the functions of both, as well as to continue work on the Integrated Data Base. He would welcome views on this matter, so that appropriate action could be taken.

29. The representative of the European Communities said that the matters considered by the two bodies at present under the GATT 1947 should be considered together in the WTO. To improve the efficiency, and perhaps also to cut back on the number of meetings, one could therefore consider merging the Tariff Concessions Committee and the Technical Group which would make it possible to identify in the WTO where the problems arose in market access and to deal with them as efficiently as possible.

30. The representative of the United States said that, for the reasons given by the Community, his delegation would also support such a merger. However, care should be given, when considering terms of reference for the new committee, not to create conflicts with committees under other agreements in the WTO that would also be dealing with, among other things, quantitative restrictions in their sectoral areas. This did not seem to be an insurmountable problem, and his delegation looked forward to discussing it in the Sub-Committee.

31. The representative of Australia supported the proposal by the Community. The Tariff Concessions Committee had an important role to play in monitoring the implementation of negotiated reductions in tariffs, and would continue to have this very important function following the implementation of the Uruguay Round results. The WTO therefore needed to provide for such a

committee with terms of reference very similar to those of the present committee. It also made sense to include in the new committee the present functions of the Technical Group. As the United States had indicated, particular attention would need to be given to working out the specific terms of reference for this committee.

32. The representative of Canada supported the proposal to establish a successor to the Tariff Concession Committee, and to incorporate into it the responsibilities of the Technical Group. The terms of reference of the new Committee should not be restricted to the monitoring of implementation of MTN commitments but should also include responsibilities for a number of technical issues, such as implementing changes to the Harmonized System, derogations from negotiations under Article XXVIII of the GATT 1994, and so on.

33. The representative of Thailand, speaking on behalf of the ASEAN countries, supported the Community's proposal.

34. The representative of Argentina supported the Community's proposal, and said that one of the problems that would have to be looked at carefully both in the new committee and in other WTO committees where this issue would be analyzed, was the question of quotas.

35. The representative of Japan said that his delegation did not have instructions that would allow it to support the Community's proposal. While there might be some necessity to establish some kind of successor body to the Tariff Concessions Committee, his delegation did not have the same impression with regard to the Technical Group, which had not been particularly active until now. The functions relating to quantitative restrictions and non-tariff measures were distributed in the WTO to different bodies created thereunder, and Japan believed that one would first have to determine what needed to be done in this area before deciding about the nature of that group in the WTO.

36. The Chairman expressed the hope that in reaching a decision on this matter, Japan would take account of the broad measure of support for the proposal to merge the two bodies in the WTO. He proposed that the Sub-Committee revert to the question of the successor body to the Tariff Concessions Committee at its next meeting, after Japan's delegation had received further instructions which would hopefully allow a consensus agreement.

37. The Sub-Committee took note of the statements, and agreed to the Chairman's proposal.

(ii) Rules of Procedure for WTO bodies

38. The Chairman said that he shared the view that had appeared to prevail in the Sub-Committee that the Sub-Committee should draw up rules of procedure for the Ministerial Conference and for the General Council, and that rules for the third-level bodies, namely subsidiary bodies, would not be necessary as of day one of the WTO and could be left to the bodies concerned or to the General Council to deal with. However, he recalled that New Zealand had proposed that it might be useful for rules of procedure of subsidiary bodies also to be drawn up by the Sub-Committee. He had no problem with this suggestion except to say that the input for these rules of procedure would have to come from delegations themselves. He hoped that New Zealand would be able to provide an input in this regard at the present meeting.

39. The representative of New Zealand said it was important that the Sub-Committee prepare draft rules of procedure for the whole array of committees that would be established in the WTO so that they could function effectively from day one. The draft rules of procedure for the General Council and the Ministerial Conference would, after they had received detailed consideration, provide guidance for rules of procedure for subsidiary bodies. He noted that the draft rules of procedure for the General

Council already contained references to the application of those procedures in subsidiary committees established under the General Council. In the light of the discussion on the two sets of rules of procedure presently before it (document numbers 2028 and 2029), the Sub-Committee would be in a better position to define what was appropriate for subsidiary bodies.

40. The Chairman said that New Zealand's suggestion was one way of proceeding, although he had hoped for more specific suggestions from that delegation with regard to rules for subsidiary bodies.

41. The representative of the European Communities said that it would be appropriate, first, to consider rules of procedure for the first- and second-level bodies and then, if time permitted, to look at the third-level bodies. Time was short and the Sub-Committee should concentrate on what was really needed as of day one. Since the WTO Agreement provided for rules of procedure of subsidiary bodies to be approved by the General Council before they were finally adopted, there would be some time lag in any case, albeit minimal. The Sub-Committee should concentrate on questions of immediate importance. As regards the non-papers by the Secretariat on rules of procedure for the Ministerial Conference and the General Council, the Community believed they were a good basis for further discussion. The Community had a number of technical observations to make on these non-papers and suggested that a drafting committee, composed of a small number of interested delegations, be established to discuss these matters. There were considerations of transparency which would have to be respected, but there were also considerations of efficiency involved.

42. The Chairman said that the Community's suggestion was useful. While transparency would mean that all were engaged in the process, he would suggest that only really interested delegations participate in any such exercise. He would give this matter further thought.

43. The representative of Australia said that his delegation had comments on particular aspects of the non-paper on rules for the Ministerial Conference, but if this matter were going to be taken up in another forum then his delegation would wait until that occasion.

44. The representative of Canada said that his delegation too had comments on the two papers which it could make either in a smaller drafting group, which was a good suggestion, or in writing to the Secretariat, whichever way the Chairman chose to proceed.

45. The representative of the United States said that his delegation had comments similar to those of Australia and Canada, and that it would appreciate a ruling from the Chairman on how to proceed. The United States would support a drafting group.

46. The Chairman said he had hoped that delegations would give their general views on the two non-papers, on their approach, on whether their coverage was adequate and whether any areas had been left outstanding. A drafting exercise would be useful only after such views were known.

47. The representatives of New Zealand, Hong Kong, Poland, the United States, India, the European Communities, Morocco, Egypt, and Switzerland expressed support for the thrust of the non-papers by the Secretariat and believed them to be a good basis for further discussion.

48. The representative of New Zealand said that his delegation had a number of specific comments which it would make in a smaller drafting group if the Chairman believed that to be appropriate.

49. The representative of Hong Kong said that his delegation wished to note the reference in Rule 7 of the rules for Ministerial Conference, and a similar reference in the rules for the General Council, to a communication from or on behalf of a Minister for Foreign Affairs. Some Members did not have

a Minister for Foreign Affairs, and this provision could therefore be reformulated in some way, perhaps by including reference to a Minister for Trade as well.

50. The representative of Poland said that although the non-papers faithfully reflected the original concepts and rules, he believed that nearly fifty years after they had been drafted it would perhaps be useful to reflect on the pragmatic experience of the GATT which had been quite useful and which had had the particular advantage of having turned out to be workable. Rules such as the complex procedure for credentials, the five minute speaking rule and the procedure for amendments would more usefully be tackled in a less formal way, on the basis of past GATT practice.

51. The representative of the United States said that the comments by Poland seemed to be appropriate. There was still some work to be done and the United States therefore had agreed with others on the suggestion for a drafting group. While his delegation would have detailed comments to make in whatever forum suggested by the Chairman, it wished to note, as had been indicated by the Secretariat, that there were ongoing discussions on derestriction of documents in the GATT 1947 Council. The United States had recently circulated some specific ideas in this regard for consideration at the forthcoming GATT Council meeting, and looked forward to having those ideas discussed in this Sub-Committee if and when the Chairman felt appropriate.

52. The representative of India supported Poland's statement. His delegation was open to the idea of a small drafting group, but believed that if delegations had only a few comments to make they could do so now so that the Secretariat could have a fair idea of the modifications that were necessary in the two non-papers. The idea of a small drafting group gave the impression that comprehensive changes to the drafts might be made, which was not something that his delegation was willing to contemplate.

53. The Chairman said that if the suggestions made by individual delegations were immediately acceptable to others there would be no problem. However, if some delegations had reservations on some suggestions, then it would be best to resolve it within a smaller group.

54. The representative of the European Communities said that the Community's comments on the non-papers were technical in nature and might be difficult to resolve on the spot. For this reason, the Community had suggested a drafting group. However, an alternative would be to ask participants to submit their comments in writing within a certain deadline, and then to ask the Secretariat to redraft the non-papers on the basis of comments received.

55. The representative of Morocco agreed with India that if the Secretariat's drafts appeared to need only to be enhanced in one way or another by adding certain technical drafting aspects, then that could be done in the Sub-Committee itself. However, if more substantial changes were felt to be needed, then a drafting committee would be essential. His delegation wished to underline that one was drawing up draft rules of procedure for the bodies of a world trade organization. The rules of procedure for the Ministerial Conference of that organization should, therefore, be more elaborate in order to avoid possible conflicts of procedure in the future. Rule 1, for example, stated that sessions of the Ministerial Conference "shall be held from time to time", which was very vague. One could surely say simply that the Ministerial Conference would be held at least once every two years. Vague aspects of this type prompted him to say that the rules should perhaps be enhanced further to make them a firm body of rules of procedure of the WTO.

56. The Chairman said that the phrase "from time to time as required" referred to by Morocco in Rule 1 had been intended to provide flexibility in calling sessions of the Ministerial Conference.

57. The representative of Australia said that his delegation would be willing to either submit its views in writing to the Secretariat, or to raise them in a smaller drafting group. However, he agreed

with India that it would be useful to give the Secretariat some very general orientation. In this regard, he wished to make two comments. First, in relation to rule 7 of the Ministerial Conference, one needed to be certain that the rule fully covered the broad functions of the Ministerial Conference and not just the decision making aspects of the WTO. Second, in relation to rules 8 and 9, one needed to consider carefully the words in these two rules in relation to the issue of countries that had negotiated in the Uruguay Round and signed the Final Act but were still acceding to the GATT and the WTO.

58. The representative of Egypt said that the draft rules should be subject to further editing or reediting, in view of some shortcomings. For instance, Egypt would prefer to see a difference made in the text between an ordinary session and an extraordinary session. Also, some rules appeared to be difficult to read, such as rule 29, and he believed that further drafting would be required on such rules. As others had suggested, comments on the various rules in the drafts could be provided to the Secretariat within a limited period of time, and then a drafting group could be established to take that work further.

59. The representative of Switzerland said that the Community had made an excellent proposal on the establishment of a drafting group. Establishing such a group would not mean that one would redraft completely the texts, but would be a tool to deal with questions of detail more efficiently. By way of general comments on the non-papers, he said that it was important to keep in mind that the WTO would be an international inter-governmental organization which would be in charge of administering the agreements emerging from the Uruguay Round. In addition, the WTO would be a negotiating body, which was a fundamental character of the organization. One would have to be careful that all the provisions in the rules of procedure took account of the negotiating character of the organization. As Poland had said, the experience of the GATT would be of value in this respect. These basic considerations had a particular importance in relation to rules 8 and 9 on observers, which would have to be dealt with in a more prudent and systematic way, perhaps by indicating a certain number of criteria as contained in another non-paper by the Secretariat (document 2035).

60. The Chairman requested delegations that had particular proposals to make, to convey them in writing to the Secretariat by 30 September. After these proposals had been received, he would, together with the Secretariat see whether a drafting committee was required. If the proposals could be easily incorporated into revised versions of the two non-papers, this would be done. If, in addition to their written suggestions, delegations believed that they needed an opportunity to sit around a table then the convening of a drafting group would be considered.

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

B. Transitional Arrangements

62. The Chairman noted that members of the Sub-Committee had had an extensive exchange of views on this subject at an informal meeting on 23 September. The representative of Hong Kong had not been present at that meeting, and since that delegation had recently circulated a paper on this matter (PC/IPL/W/7), he would call on it to briefly introduce its communication. However, he did not propose to enter into a discussion at the present meeting because, as he had indicated at the informal meeting, he intended to move into a bilateral and plurilateral stage. Once that had been completed, he would return to the broader informal group and then to the Sub-Committee.

63. The representative of Hong Kong said that the paper in PC/IPL/W/7 raised a lot of questions without providing definite answers. It was believed that an analytical approach along these lines would help to identify the way forward, especially if agreement could be reached on the general criteria for a solution, which his delegation had previously suggested as being neutrality, effectiveness and simplicity. The Uruguay Round had been completed in good faith and the Preparatory Committee process was

a continuation of that. Assuming good faith now and after the entry into force of the WTO, it could be that the problems on both sides, namely in respect of coexistence and also in respect of withdrawal, were being overemphasised. Hong Kong believed that an arrangement was needed to deal with the odd cases where a degree of legal certainty was indispensable. In other words, one should be looking at nothing more than a safety net for all. For such a safety net, one needed only two elements. First, a commitment by all to be, irrespective of withdrawal, part of the old institution, including the continuation of consultations and the dispute settlement procedures. Second, a commitment to respond to new dispute settlement requests in areas where the special transitional rules in the new agreements might operate to leave a vacuum. In this regard, Hong Kong's paper had drawn particular attention to anti-dumping, and subsidies and countervailing measures. One could call this approach minimalist because it did not aim to do anything more than was absolutely necessary. The approach was built on good faith and did not require any preconditions. In other words, a party remained free to decide on its own regarding coexistence or withdrawal. If coexistence could be agreed all round and its associated legal problems adequately sorted out, the idea he had outlined might not be necessary at all. Hong Kong was willing to explore with others any solutions in this direction. Its paper had not dealt at length with institutional arrangements, on which there had been a substantial contribution from Mexico and which should be read side by side with Hong Kong's contribution.

64. The representative of Mexico agreed that the question of transitional arrangements involved issues not only related to the coexistence of the GATT 1947 system and the new WTO system, but also the withdrawal of contracting parties from GATT 1947. In this context, her delegation had circulated a communication (PC/IPL/W/4), which it had not yet had the chance to introduce in detail, showing the specific aspects of problems deriving from pending cases in dispute settlement.

65. The representative of Argentina said that aside from the problems that had already been identified, there might also be cases of a transitional nature in negotiations under Article XXVIII, and Argentina was already involved in such a case.

66. The Chairman said he intended to move on to a plurilateral process within the course of the present or the following week.

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

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

68. The Chairman recalled that at the 14 September meeting of the Sub-Committee, he had indicated that he would hold consultations on suggestions for the establishment of an informal open-ended body to discuss the question of the Textiles Monitoring Body (TMB). Following extensive consultations, he proposed that an informal, open-ended Contact Group on Textiles be established, which would report to the Sub-Committee as soon as concrete proposals emerged. On the question of Chairmanship, while he had to regretfully decline suggestions that he assume this post, he was in the process of searching for a suitable candidate who would command a broad measure of support.

69. The Sub-Committee took note of the statement and agreed to the Chairman's proposal.

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

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

70. The Chairman said that the Sub-Committee should concentrate on developing arrangements with those inter-governmental organizations with which formal arrangements had to be in place by

1 January 1995 or shortly thereafter. Using this as a guiding principle, he would suggest that the Sub-Committee consider arrangements for cooperation with the following four organizations: the IMF, World Bank, UNCTAD and WIPO. He was open to suggestions as to whether other organizations should be included, and as to how the question of establishing relations with these organizations should be approached.

71. The representative of Australia said that the general framework presented by his delegation at the 19 July meeting of the Sub-Committee, envisaging three categories of organizations with which the WTO would need to develop relations, might still be useful. The categories were the following: (i) organizations which had been given a functional role under particular WTO Agreements. Included in this category would be the IMF and World Bank, mentioned by the Chairman in his list, plus also the CCC, which had a functional role under the Agreements on Customs Valuation and Rules of Origin. Relations with these organizations would need to be more formal than with others, such as through the establishment of memoranda of understandings between the heads of those organizations and the Chairman of the General Council; (ii) organizations which had a function to supply information regularly to the WTO or its organs. Included in this category would be the WIPO and UNCTAD, also mentioned by the Chairman in his list, and possibly others such as the UNEP and CSD. Relations with these organizations would be less formal, with the negotiation only of a possible exchange of letters setting out terms under which information would regularly be provided to the Secretariat rather than through participation in the WTO bodies concerned; and (iii) organizations which wished simply to be kept informed of developments in WTO bodies. None of the organizations mentioned by the Chairman would fall into this category, and one perhaps did not need to take too much trouble with these organizations at this stage.

72. The Chairman referred to a debate that was taking place in the Trade and Development Board of the UNCTAD, which would also be taken up at the UN General Assembly's present session, on the question of the overall, global institutional mechanism for economic and financial policy making. In this connection, a number of crucial questions would need to be addressed and some agreement reached. For example, where did the WTO see itself in this regard? Did it see itself as being part of the UN, as a specialized agency along the lines of the IMF and World Bank, or as an independent organization existing on its own? Or was there some middle ground between these three options such that the WTO could have a relationship with the UN but at the same time maintain a certain degree of control over its own activities?

73. The representative of Argentina said that while Australia's approach was a good basis to start from, his delegation would suggest adding, whether in the first or the second category, the following four organizations to the list: the FAO, which was mentioned in Article 10:4(b) of the Agreement on Agriculture; and the International Office of Epizootics, Codex Alimentarius Commission and the Secretariat of the International Plant Protection Convention, all of which were mentioned in the Agreement on Sanitary and Phytosanitary Measures. Specific cooperation mechanisms had been provided for in respect of the latter three organizations.

74. The representative of the United States said that the question of the WTO's role with respect to the UN clearly needed to be discussed. He would note, however, that in contrast to provisions in agreements establishing other international organizations, there was no provision in the Agreement establishing the WTO that would create a clear relationship with the UN. As regards the categorization suggested by Australia, he recalled that the Chairman had indicated previously that the Secretariat had already commenced work with other international organizations with a view to defining the scope of cooperation between the WTO and these organizations. The United States encouraged that work, and sought some type of status report as and when the Chairman deemed appropriate. In particular, it would be useful to know what positions the Secretariat was taking in discussions with these other organizations. With regard to the IMF and the World Bank, the United States was interested in exploring

with the Sub-Committee the establishment of a small representative office in Washington to permit more frequent interaction among the WTO, IMF and the World Bank, based on the experience and on the advantage of having had an office in Geneva representing the IMF and, previously, the World Bank. These would, however, not necessarily serve as models for a representative WTO office in Washington because the functions were clearly somewhat different.

75. The representative of the European Communities said that the organizations listed by the Chairman included all those that were a priority and already represented a certain amount of work that would have to be done quite rapidly. With regard to possible links between the UN and the future WTO, the Community believed that the GATT had thus far survived very well in its particular situation, and did not see any point at this stage in undertaking any urgent thinking on this particular matter. If any initiative were to be forthcoming from the UN, there would be time enough to consider it then. His delegation agreed with the United States that there was nothing in the WTO statutes concerning relations with the UN. There was also nothing in the UN Charter as regards this aspect which would compel the WTO to move in the direction of possible links with the UN, even though certain comments or ideas might be circulating in this respect.

76. The representative of India said that the framework suggested by Australia was a good one since it helped to classify organizations into three useful categories which might enable the Sub-Committee to take decisions. While his delegation did not expect either the first or the second category to pose many problems, there was a case for decisions to be made in the third category, and in this regard he had some preliminary remarks¹ on the Secretariat's non-paper in document 2035. With regard to the United States' proposal for a representative office in Washington, his delegation would convey this to its authorities for consideration.

77. The representative of Hong Kong expressed support for the categorization suggested by Australia which could provide a logical listing of organizations with which the WTO would be expected to develop relations of one type or another. As regards the WTO's relationship with the UN, he believed this to be a serious question and agreed with the Community that this was perhaps not a priority issue at the present time. He would offer the same comment on the idea of an office in Washington, which could wait until the more immediate problems had been resolved.

78. The representative of New Zealand said that his delegation had noted others' comments on the question of relations between the WTO and the UN, and would seek further guidance thereon from its authorities.

79. The representative of Egypt said that Australia had presented a good proposal on the categorization of the relationship between the WTO and other international organizations. However, the Chairman had raised a pertinent question which needed to be addressed prior to defining the WTO's relationship with other organizations. One would need to consult on how the WTO saw itself, whether as part of the UN or a specialized agency. Also, with the debate that was going to take place at the UN General Assembly level, one should think of how to perceive the assessment to be made by the General Assembly, and consider making a contribution to the debate. Certainly, as the Community had said, the GATT had survived thus far, but it had done so on the basis of a *de facto* relationship. Egypt did not believe that one would want the WTO to continue in this manner. The WTO had to have a clearer legal status and a clear definition about its relationship with other organizations. One could perhaps take a closer look at the various kinds of relationship agreements the UN had with other international organizations to see where one wanted to have the WTO in its relationship with the UN.

¹Carried under sub-item (ii) below.

There was a distinction, for example, between the type of relationship the UN had with the FAO and WHO, and that with the IMF and World Bank and the IAEA.

80. The representative of Canada associated his delegation with the Community's statement on the question of possible links between the UN and the future WTO.

81. The representative of Switzerland said that the Chairman had prioritized the different organizations correctly and that Australia's proposal was helpful. Switzerland attached importance to cooperation with the IMF and World Bank, and believed it was important to look not only at the kind of arrangement that was being proposed by the United States concerning an office in Washington, but also other arrangements such as cooperation at the staff level. One would also have to reflect on the possibility of joint analyses together with the IMF and the World Bank in order to save resources and enhance the quality of the output.

82. The Chairman said that his intention had been to sensitize GATT delegations to the kind of views being expressed both in Geneva and in New York on the question of relations between the WTO and the UN. Delegations in other forums were taking up this question and would view it in a different perspective. It was important for GATT delegations also to sensitize their capitals to the way they looked at the question of the WTO's relations with international organizations. Otherwise, he could foresee a situation in which decisions were taken, perhaps at the UN General Assembly or elsewhere, and the WTO being faced with a fait accompli. Unless national delegations were sensitized as to the role the WTO saw for itself, this aspect would not be taken into consideration in either supporting or voting against the resolution that was being floated on this subject. Therefore, by default one could find oneself in an uncomfortable situation.

83. The representative of Argentina said that the lack of a specific mention in the WTO provisions regarding the nature of the relationship between the WTO and the UN was deliberate and not an omission. His delegation agreed with others that this was not the right time to analyze this question, and would consider a proposal in this connection with keen interest in the future.

84. The representative of Morocco said that his delegation attached importance to cooperation agreements between the WTO and the major international organizations active in the monetary, financial and development fields. He recalled that in the Marrakesh Declaration, Ministers had confirmed their resolution to strive for greater global coherence of policies in the fields of trade, money and finance. The Sub-Committee now had the occasion to try to outline what Ministers had implied in that Declaration, namely the worldwide coordination of these policies. Indeed, at the closing ceremony of the Marrakesh Ministerial meeting, the King of Morocco had invited the international community to reflect on the possibility of institutional arrangements that would make it possible to ensure better coordination of policies at the world level. The Sub-Committee had now the occasion to begin with a review of the cooperation agreements existing between GATT 1947 and the IMF and World Bank and to see not only to what extent these agreements could be renewed or extended, but also whether these were sufficient to achieve the goals outlined at Marrakesh.

85. The Chairman said that there was no question that the WTO needed a cooperative relationship with international organizations, and in particular with the UN. However, one had to be careful that in establishing such relationships the WTO's own freedom of action and freedom to develop in line with the aims and principles of the WTO Agreement were not compromised or circumscribed.

(ii) Observer status for international organizations

86. The representative of the United States said that his Government had adopted a fairly non-restrictive view on the question of which organizations should be given observer status since this related

indirectly to the participation of non-governmental organizations as well, a matter that his delegation had been pursuing for the time being in the Sub-Committee on Trade and Environment. On the question of criteria and conditions for observer status in the WTO, the Secretariat's non-paper (document 2035) was on the right track. However, in keeping with its non-restrictive approach, his delegation would suggest deletion of the word "only" in paragraph 2 of the non-paper in order to allow flexibility to consider requests from organizations other than those specifically referred to in that paragraph. His delegation agreed that observership of additional international organizations should be considered on a case-by-case basis and guided by the principles of relevance, responsibility and willingness to provide reciprocal access. The United States believed that the pursuit of specific agreements with international organizations seeking observership should probably be limited to the most important ones, as suggested by the Chairman. In this connection, the Secretariat might wish to devise a structure which identified classes of international organizations and defined the scope of participation in WTO proceedings based on the specific classification of individual organizations. In other words, one might want to look at observership in the context of specific WTO bodies rather than general observer status in the WTO because of the particular interests of the organization involved.

87. The representative of India said that there should be some element of selection and discretion in the criteria, and that the word "only" in paragraph 2 of the non-paper should be retained. On paragraph 4, if it were agreed that requests should be considered on a case-by-case basis, then some general agreement on the criteria would also be required. In this connection, his delegation believed that "membership of the organizations concerned" was perhaps not adequate, and that something would need to be said about the nature of the membership of the organizations concerned. On paragraph 6, his delegation had no basic disagreement, but wished to recall a question raised at an earlier occasion as to whether one should seek out organizations to be observers or whether a request should come from the organization itself. As regards the "sunset" provision, India believed it to be appropriate because there had to be a demonstrable interest in the proceedings of the WTO on the part of observer organizations. India categorically rejected the granting of observer status to NGOs, because it would amount to a politicization of the organization, which was not in anyone's interest. His delegation hoped that agreement on the criteria for granting observer status could be reached soon.

88. The representative of Hong Kong said that one would first have to consider the criteria for granting observer status before moving to actual cases. Clearly, there might also be different levels of observers, with some observers restricted to a Committee or Sub-Committee and some restricted to a Council, and so on.

89. The Chairman, referring to the question of observer status for NGOs, said that since this issue was being considered in the Sub-Committee on Trade and Environment, one should await the results of that discussion and see whether they were suitable also for the purposes of this Sub-Committee's work.

90. The representative of New Zealand, addressing the non-paper, said that his delegation did not at the present stage see any difficulty with the word "only" in paragraph 2. On paragraph 4, he suggested that past practice regarding relations with GATT 1947 be included as one of the criteria, particularly in light of the provision in Article XVI:1 of the WTO Agreement. On paragraph 5, he agreed with others that observer status for some organizations might not be necessary for all WTO bodies, in particular the Ministerial Conference and General Council. Finally, his delegation agreed with the provision of a "sunset" clause in paragraph 10.

91. The representative of Canada supported a cautious approach to questions of automaticity in granting observer status in some of the subsidiary bodies. In this connection, he suggested that the last sentence in paragraph 6 of the non-paper might be deleted. He noted that government observers

in the GATT 1947 bodies were currently assessed an annual fee, and raised the question of such an assessment on organizations that were granted observer status in the WTO.

92. The representative of Switzerland supported the cautious approach suggested by others with respect to observers. His delegation believed that the question of observers in the Ministerial Conference should be addressed before considering the different criteria that those observers should fulfil.

93. The representative of the European Communities agreed with New Zealand that due account should be taken of existing cooperation agreements or arrangements between the GATT 1947 and other international organizations in paragraph 4 of the non-paper. His delegation questioned whether the first two square-bracketed texts in that paragraph should be maintained, because it was difficult to see how they would provide any guidance on which organizations to invite or not. He supported the idea of reciprocity in the last square bracket, and noted in this connection that fees assessed on other international organizations that were observers might have a counter-productive effect if those were then to assess a similar fee on the WTO. On paragraph 2, as long as it was clear that one was dealing with observer status for international organizations, the retention or deletion of the word "only" would not make much difference. On paragraphs 3 and 6, his delegation believed that the word "automatically" could be deleted without any effect on the text.

94. The Chairman, referring to the question of charging fees to other international organizations, said that it was out of courtesy that international organizations did not assess any such charges on each other, and that he could foresee problems in going along that path.

95. The representative of Morocco agreed with the Chairman's statement. With regard to the non-paper, his delegation believed it was a good basis for further work.

96. The Chairman, summing up the discussion under this item as a whole, said that Australia had set out a logical and operative framework which envisaged looking at this issue at three levels, and which would assist in determining what organizations the Sub-Committee was going to look at. In addition, the Secretariat's non-paper on observer status would need to be revisited. In the course of future debate, one would need to see where the WTO fit in the galaxy of international organizations and in the framework of international cooperation. The UN Secretary-General had established a Committee that was discussing the whole question of international economic policy and finance, and whether one liked it or not, this would have to be given due consideration. In forming views on the organizations with which relations would be immediately needed, namely as of 1 January 1995, he suggested concentrating on the four he had mentioned at the beginning of the discussion, and to take into account the suggestions made by Argentina and some others on a few other functional organizations.

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