

WORLD TRADE ORGANIZATION

RESTRICTED

TN/TF/M/22
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(08-0333)

Negotiating Group on Trade Facilitation

SUMMARY MINUTES OF THE MEETING

Held in the Centre William Rappard
from 10-14 December 2007

Chairman: H.E. Mr. Eduardo Ernesto Sperisen-Yurt (Guatemala)

1. The Chairman recalled that the proposed agenda for the meeting had been circulated in WTO/AIR/3128. As Members would have seen from the airgram, the meeting sought to continue the recently initiated process of intensified textual work. The session would also address the standing item of participation by the Annex D organizations.
2. The agenda was adopted.
3. The Chairman explained the course of the negotiating week. Its general structure resembled that of the last session. As at that time, it was planned for the meeting to open and close in plenary mode, leaving the days in between for focussed textual work. Those drafting initiatives were set to take place in a variety of formats to ensure maximum flexibility. He would chair those sessions in open-ended informal mode, working on the textual proposals as contained in the compilation document. In addition, Members were invited to engage in further negotiation amongst themselves, focussing on issues requiring additional work.
4. A report would be provided from his side at the last meeting day, offering a personal evaluation of the outcome of the week. This would be complemented by a written summary of the drafting suggestions made to assist Members with their preparations for future negotiating work.
5. All of this would hopefully lead to another successful meeting that moved the Negotiating Group (NG) an additional step forward on its negotiating path. He did not have to recall the amount of work still ahead and the limited time Members had for its completion.
6. With respect to the organizational sequencing of the week's working sessions, it was foreseen to start with the proposals on GATT Article VIII, addressing the texts on a chapter-by-chapter (and, where applicable, heading-by-heading) basis. On Thursday morning, the NG would move to the areas of technical assistance, capacity building and S&D. To ensure sufficient time for their discussion and to allow for a balanced distribution of overall meeting time, there would be opportunity to continue the deliberations on those matters in the afternoon.
 - A. NEW AND REVISED PROPOSALS
7. This part of the meeting was conducted in informal mode with the exception of the following introductions of new submissions:

8. The representative of Japan presented proposal TN/TF/W/116/Rev.1, explaining that it reflected the feedback offered by other Members on its earlier version TN/TF/W/116. The comments had been taken very seriously and had found their way into the revised text which was co-sponsored by Mongolia. The main changes compared to the previous version of the document were the following:

9. In paragraph 3 of the preamble, the description concerning S&D and technical assistance/capacity building (TA/CB) had been updated and made more comprehensive in order to reflect the intensive horizontal discussion held on those items since the date of submission of the original proposal. Accordingly, original paragraphs 5 and 6 of the "textual proposals" that related to S&D had been deleted.

10. With respect to paragraph 1 of the textual proposals, a comment had been received from a Member that the submission could be improved by making it clear that both administrative and judicial appeals were available to traders. The wording of paragraph 1 of W/116/Rev.1 reflected this suggestion. At the same time, amendments had been made in order to limit the eligibility of people who could make an appeal, equally reflecting related suggestions made in past meetings.

11. In addition, the term "rulings" had been deleted as a result of comments made by several Members that rulings were not subject to appeal procedures. A proposal had also been made to delete "without penalty". "Without penalty" purported to ensure that appellants would not be disadvantaged by making an appeal, which was important to enhance traders' comfort. This term was extracted from the Agreement on Implementation of Article VII of the GATT 1994 (the Customs Valuation Agreement). The note to Article 11 of the Valuation Agreement explained "without penalty" as follows: "'Without penalty' means that the importer shall not be subject to a fine or threat of fine merely because the importer chose to exercise the right of appeal. Payment of normal court costs and lawyers' fee shall not be considered to be a fine." Paragraph 3 of the note read: "However, nothing in Article 11 shall prevent a Member from requiring full payment of assessed customs duties prior to an appeal."

12. With respect to paragraph 2 of the textual proposals, a separate paragraph had been inserted about the possibility of requiring an administrative appeal prior to a judicial appeal in order to establish a more concrete provision on this issue.

13. Regarding paragraph 3 of the textual proposal, the sponsors had incorporated the suggestion by a Member that a reference was necessary to the provision that stipulated means of publication.

14. In the first sentence of paragraph 4 of the textual proposal, other Members' comments had been reflected that it was difficult to establish periods for review and correction of decisions under appeal procedures that uniformly applied to all Members. As had been explained several times in the past, it was not the intention to establish periods for review and correction that uniformly applied to all Members.

15. In the second sentence of paragraph 4, another suggestion had been incorporated according to which the appellant should have the right, in case of an undue delay in the administrative appeal procedures, to bring the case to the next higher instance.

16. In paragraph 5 of the textual proposal, the suggestion had been incorporated that it was necessary for traders to have opportunities to receive information concerning administrative decisions such as the reasoning of the decision, including applied laws and regulations.

17. Many delegations had found the term "complaints" to be misleading which was why it had been replaced by "grievances" and "the opportunity to receive information".

18. Regarding paragraph 6 of the textual proposal, Japan had found at past Negotiating Group meetings that many Members misunderstood and confused "opportunities to raise complaints" with "appeal procedures". Some Members had also pointed out that the relationship between opportunities to raise complaints (grievances) and judicial procedures was unclear and that informal procedures were not suitable for WTO rules.

19. As it had been explained by Japan many times in the past, it was hoped that all Members fully understood the concept of the proposal. But in order to avoid any misunderstanding and confusion, the original paragraph 4 (new paragraph 6) had been modified. It was not the intention to establish a new and bureaucratic system. Grievances would be received, for example, at existing enquiry points, divisions, sections of customs and other border agencies concerned, depending on each Member's situation. The word "grievance" was already used in Article 2, paragraph 21, of the Agreement on Preshipment Inspection.

20. The representative of Switzerland introduced document TN/TF/W/130/Rev.1, explaining that it was a revised version of Mongolia's, Norway's and Switzerland's earlier proposal on the simplification and harmonization of trade documents that took into account comments that had been made in earlier plenary discussions by the Membership. The authors had not wanted to miss the opportunity to prepare this revision for the more focused drafting discussions scheduled to take place that week.

21. In the revision, a change had been made in paragraph 2(iii) the aim of which was to introduce an additional qualifier regarding electronic messages by saying that they should be inter-operable. A second modification that had been made was to change "trade users" into "trade operators". This was mostly a drafting issue. A more substantial change related to the same paragraph which now contained the formulation that "electronic messages to be interchanged and inter-operated ... with internationally widely accepted standards for electronic information exchange", thereby no longer solely referring to the standards recommended by the Customs Co-operation Council.

22. There were several reasons for the modifications. With respect to the change regarding the inter-operationability, it was not merely essential that electronic messages were interchanged. They also had to be inter-operable and therefore reusable so as to reduce the administrative burden. The Trade Facilitation negotiations in the WTO only looked at a part of trade flows. As a result, when talking about exchanging messages, it had to be taken into account that there was a broader environment surrounding them and that electronic messages were also inter-changed within traders, shipping companies and the like. It should be possible for these kind of messages to be inter-operated between the various actors in the logistics chain.

23. The second modification had been introduced as a result of a comment made at an earlier plenary that an exclusive reference to recommendations of the Customs Co-operation Council might produce outdated results. Technology was moving very fast and there existed already widely accepted standards for the electronic information exchange. But there was no such related decision by the Customs Co-operation Council in the WCO. The revision wanted to reflect that fact.

24. On paragraph 2(ii), it was absolutely necessary that everybody used the same kind of elements. The UN Trade Data Elements Directory (UNTDDED) consisted of standardized data elements which permitted to make the information exchange inter-changeable and inter-operable.

25. Reference had also been made in the Trade Facilitation negotiations to "UNeDocs" or the WCO Data Model. While this referred to the same data, the UNTDED represented the widest universe of data elements. Every country used a subset of the UNTDED.

26. The representative of Switzerland introduced JOB(07)/213, explaining that it was not a Swiss document but originated from the WCO, consisting of their glossary for international customs terms. It had occurred to Switzerland that, as Members started to focus more on specific legal texts, it might be useful to have a clear idea and definition of the terms used by the international organization that was the expert on the subject to avoid reinventing the wheel. The Glossary could be consulted for definition purposes and would help Members in their deliberations, enhance delegations' understanding and their drafting of the trade facilitation proposals. It was basically a dictionary for reference purposes.

27. The representative of Angola introduced document TN/TF/W/152, saying that it was a reaction to the communication on the issue of Pre-shipment Inspection (PSI) that the EC had tabled in June 2006. Angola wished to maintain PSI merely because it sought to preserve the health of its population. One should recall the case of an African country being used as a depository for toxic waste. If there had been preshipment inspection, such a thing would not have happened. Angola could provide various examples to argue its case. He wished to stress that Angola used this system to conserve the health of its population and the environment and, especially, to maintain a certain financial balance in its customs revenues. However, Angola was prepared to discuss this with the EC in order to reach consensus.

28. The representative of the United States introduced document TN/TF/W/151, explaining that it was an updated overview of US Aid-for-Trade in trade facilitation and related activities. It updated an earlier submission on the matter in order to provide a more recent picture of the growing US assistance activities and might be of interest to Members as they considered the types of trade facilitation-related assistance currently available and how such assistance might be used for the implementation of the various proposals under consideration.

29. US Aid-for-Trade had grown significantly over the past years with trade facilitation assistance representing one of the larger shares. Assistance was being provided through a number of US agencies for a wide variety of activities such as work in the areas of transparency, administrative practice and organization, risk management, customs valuation, classification, and others.

30. The United States had also been active in the needs assessment exercises organized by the WTO Secretariat. Most recently, the US Agency for International Development (USAID) had helped to facilitate the needs assessment exercise in Uganda. The US looked forward to continuing the work with countries to provide assistance in trade facilitation, including in connection with the outcome of the Trade Facilitation negotiations. The US delegation would be happy to meet with delegations bilaterally to answer any questions they might have.

31. The representatives of Switzerland and Norway introduced document TN/TF/W/131/Rev.1, explaining that the proponents of this revised proposal on international standards had tried to accommodate the various comments made in the plenary and received in bilateral talks on its previous version without undermining the general thrust of the initial proposal. The main changes were as follows: The submission now concentrated on the textual proposal, leaving aside the introduction and explanatory remarks. Under the assumption that Articles XX and XXI of the GATT would apply to the new Trade Facilitation Agreement, these articles were not mentioned specifically in the text. However, the authors assumed that this aspect would be dealt with on a horizontal basis.

32. The revision introduced further flexibility in paragraph three, going beyond the exceptions in GATT Articles XX and XXI as requested by various delegations. It furthermore clarified in paragraph two the relationship between the use of international standards and regional standards when the latter were a more efficient means to achieve trade facilitation. Finally, the definition of scope was presented in two options: the first option was a possibly open-ended short list of relevant international organizations with the latter being a closed – but longer – listing of relevant international

organizations as well as a selection of relevant international standards (as of a certain status) to which the obligation stipulated in the proposal would apply.

33. The Negotiating Group took note of the statements made.

34. The plenary was adjourned.

35. Upon resumption of the plenary meeting, the discussions continued in informal mode with the exception of the following items:

B. AD HOC ATTENDANCE OF RELEVANT INTERNATIONAL ORGANIZATIONS, INCLUDING THE IMF, OECD, UNCTAD, WCO AND THE WORLD BANK, AT THE NEXT MEETING OF THE NEGOTIATING GROUP

36. The Chairman suggested inviting relevant international organizations, including the IMF, OECD, UNCTAD, WCO and the World Bank to attend the next formal meeting of the Negotiating Group on an ad hoc basis, as provided for in the Work Plan.

37. It was so agreed.

C. OTHER BUSINESS

38. The Chairman addressed the issue of the Group's next meeting. In light of the upcoming holiday season, a busy late January schedule and resulting limitations with respect to meeting facilities he suggested for the Negotiating Group to meet again during the week of 18 February 2008.

39. It was so agreed.

40. The meeting was adjourned.
