

Negotiating Group on Trade Facilitation

SUMMARY MINUTES OF THE MEETING

Held in the Centre William Rappard
from 18-22 February 2008

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/3148. As Members would have seen from the airgram, the meeting sought to conclude the current cycle of focussed textual work on the various elements of the mandate and to advance the tabling of revised proposals in all fields. In addition, it would address the standing item of participation by the Annex D organizations.
2. The agenda was adopted.
3. The Chairman explained that the current session resembled that of its predecessor, at least as far as structure was concerned. Similar to what Members would recall from last time, it was foreseen for the meeting to open and close in plenary mode, leaving the middle days for focussed textual work. Those drafting initiatives were set to take place in a variety of formats to ensure maximum flexibility. The mornings of the sessions would be conducted under his chairmanship in open-ended, informal mode, working on the textual proposals as set out in the compilation document. He also intended to chair part of the afternoon discussions while equally leaving room for engagements amongst the Membership.
4. The results of the inter-delegation activities would be fed back into the Chair-led process through reports by the Members involved, informing the Negotiating Group (NG) about progress made and yet to be achieved. A report would also be provided from the Chair's side, offering a personal evaluation of the negotiating week. It would be complemented by a written summary of the textual suggestions made to assist Members with their preparations for future work.
5. All of these activities aimed at another successful meeting that moved Members an additional step forward on their negotiating path. There was a considerable amount of work still ahead and limited time available for its completion.
6. With respect to the organizational sequencing of the week's working sessions, it was foreseen for Members to start with the proposals on GATT Article V, followed by work on the area of customs cooperation the next day. Worksheets had again been prepared by the Secretariat to facilitate the drafting tasks. On Wednesday morning there would be a switch to the areas of technical assistance and S&D. To ensure sufficient time for their discussion and allow for a balanced distribution of overall meeting time, the NG would continue its deliberations on these matters in the afternoon, their precise format being determined as the meeting progressed. Room for further work on the implementation pillar and/or on other elements of the mandate – including GATT Articles VIII and X – would be given on the following day with the morning session having been reserved to that end.

7. Given the current situation and the overall state of the Round, he also wished to say a few words on how he saw work proceeding after the current negotiating week.

8. Members would all be aware of the intensification of the Doha negotiations and the efforts to bring them to a close by the end of the year. They would also recall the TNC Chair's reference to having to "*step up the pace*" and "*a collective determination to conclude the talks by (...) 2008*". He had further alluded to an Easter process and the need to "*give all necessary comfort to the membership*", stressing the importance of "*hav(ing) the assurance that [all areas] were moving forward within [a] broad and balanced final outcome.*"

9. This meant that Members had to be ready to make a contribution to this process. As much as it was understood that each Group had its own mode of operation and particular steps to take, the NGTF continued to be part of a broader package and had to be in a position to show its progress towards the common goal. He was aware of this Negotiating Group having a particularly strong bottom-up tradition that had done much to bring Members to where they were today. Their proposals had been driving the process and would continue to do so in the months to come. At the same time, one had to get to a point where one had more to show than simply a collection of proposals that got updated on a regular basis.

10. That was not to say that he was suddenly proposing a Chair's text or that he planned on undermining the Member-driven nature of the NGTF's work in any way. He continued to be a strong believer in the usefulness of this principle and had no intention to do away with it. Rather, he would like to keep it alive and reinforce its potential in terms of what it was able to deliver. What he was suggesting – and urging Members to bring forward – was a substantive new wave of revised proposals that could be assembled into an Easter product from the TF Group. Many delegations had already been working on such texts for some time. They should now be taken out of the drawers and put on the negotiating table. Those texts were needed as a reflection of the NGTF's progress in refining proposals and as an evidence that the Member-driven process still worked. They should mark a substantial improvement of the existing compilation in that they would revise large parts of its current texts. In other words, a "*compilation plus*".

11. While there would be more time to discuss the matter at the end of the week, he already wished to inform Members about what he saw as the key requirement for the next steps from Members' side at this stage. To make it into the Easter product, Members' proposals would need to reach the Secretariat at the beginning of 7 March. That was not meant to be a final cut-off date for the presentation of new ideas. He was perfectly aware that the process of revising suggestions would have to continue, and doors would not be closed for that. But for the purposes of this particular exercise input would need to be received by 7 March. He would then instruct the Secretariat to prepare the *compilation plus* document shortly thereafter in order to have it ready when the time came. When doing so, he would also ask the Secretariat to clean up the paper by getting rid of empty sections, merging some of the headings, where possible, and regrouping the texts accordingly.

12. Once again, this would *not* be a Chair's text and would not pretend to constitute an agreed draft Agreement. He was perfectly aware of Members' views on the matter and continued to respect them. Members would remain in charge of the process with the Easter product still being a collection of Members' texts. But it was necessary to step up the pace and to demonstrate that the Member-driven process continued to deliver the required results.

A. NEW AND REVISED PROPOSALS

13. This part of the meeting was conducted in informal mode with the exception of the following introduction of new submissions:

14. The representative of Switzerland introduced the revised version of transit proposal TN/TF/W/133 (now TN/TF/W/133/Rev.1) which was the fruit of a very long consultation process among Members concerned and among experts. The initial version W/133 had been a merger of two comprehensive proposals, one led by the EC (TN/TF/W/113) and the other led by Switzerland (TN/TF/W/119). The two proposals had looked at transit issues from different angles: where W/113 had proposed various elements essentially to clarify and improve various shortcomings of the current Article V, W/119 looked at transit issues from a more practical angle; which issues were most frequently quoted to be an impediment to efficient transit and which ones proved to be a valuable solution in existing transit arrangements? These two approaches had been merged in W/133, putting the two proposals into one document without doing any consolidation. Members had then been discussing W/133 since July 2006. Switzerland had taken careful note of the concerns raised and the proposals made during the plenaries. It had also consulted the private sector, experts from the WCO and UNCTAD, and had taken on board comments made by an expert of the World Bank on the initial proposal TN/TF/W/39. Switzerland had also taken every opportunity to share and discuss the changes with landlocked least-developed countries (LLDCs) and had organized an informal working session with interested Members on the matter in early November last year. The revised proposal now on the table was the result of those consultations.

15. The proposed measures all strived to strike the right balance between legitimate safety, security and fiscal concerns and the faster and more efficient movement of goods in transit. Switzerland wished to once more underscore the high economic relevance of efficient transit procedures for landlocked Members whose economic growth had lagged behind as a consequence of their geographical situation. Transaction costs had a high bearing on a country's competitiveness and therefore on its volume of trade. Studies had indicated that the annual growth rate of LLDCs was 0.7% inferior to that of their coastal neighbours. It was not only cost but also speed and low predictability of shipping times, highly dependent on transport infrastructure and transit procedures in their transit neighbours, that left LLDCs a neglected destination for FDI, thus impeding vertical diversification, an indispensable precondition to reduce transportation costs. Landlocked developing-country Members therefore hoped that transit received particularly positive consideration by the Negotiating Group.

16. The main changes made in the revised proposal were the following:

17. While no modifications had been made on the scope side, the new text contained an alteration of the general and security exception. It now stated in a simple and straightforward way that GATT Articles XX and XXI would be fully applicable. This kind of provision would probably at the end of the day be a horizontal provision applicable to the entire Trade Facilitation Agreement.

18. With respect to the section on freedom of transit and the choice of the routes of transport most convenient for international transit there was a minor error in that the two words "and means" in the subtitle in paragraph 4 should be deleted. This area had been one of the most controversial areas in the previous version, where it was stipulated that traders were the ones to choose the most convenient route. The concerns expressed in that regard had been taken on board with the new text trying to balance the interests of traders with those of governments. Normally a trader should be able to choose the route, but there might be circumstances – temporary or long-lasting – which impeded the free choice of the route. The same balance was sought for traffic in transit under escort.

19. As for the non-discrimination area, the only change made in the revised proposal concerned the scope of application of the national treatment obligation. This obligation was now limited to transit fees and charges and not any more to goods in transit generally. The problem with the previous scope was that it was difficult to assess its full implication. Now the implications were straightforward and easy to understand.

20. No far-reaching modification had been made to the chapters on fees and charges or on transparency, but text had been harmonized with the texts on the table under GATT Articles VIII and X.

21. Aspects falling under transit formalities and document requirements had been fully rearranged, although there was not much change in substance. The language regarding physical inspections of goods had been modified and the provision related to the sealing of consignments had been removed from the proposal.

22. The text relating to bonded transit regime and guarantees had been totally overhauled to take on board the concern of some Members that had difficulties with applying a guarantee system. It now made clear that the objective was not to impose any guarantee system, but rather to ban the collection of cash guarantees. Indeed, cash guarantees were extremely costly for traders and might even have the effect of impeding trade by SMEs. When applying a guarantee system, the condition for doing so were spelled out in the text as it had been in the previous version.

23. Hardly any change had been made in the remaining chapters. The chapter on international standards had been removed from the proposal. For Switzerland, this did not mean that the issue had been dropped, but they preferred to deal with it on a horizontal basis as proposed in TN/TF/W/131/Rev.1.

24. The representative of Hong Kong, China introduced proposal TN/TF/W/124/Rev.2 on behalf of his delegation and Switzerland. In July 2006, Hong Kong, China and Switzerland had submitted to the Negotiating Group on Trade Facilitation a proposal for improving GATT Article VIII in document TN/TF/W/124/Rev.1. The prime objective of the proposal was to strengthen paragraph 1(c) of GATT Article VIII. The sponsors of the proposal had received constructive feedback and comments from Members. In response to the positive contribution by the proponents of various proposals in a focussed drafting mode, revisions had been made to the proposal as set out in document TN/TF/W/124/Rev.2.

25. Document TN/TF/W/124/Rev.1 had attempted to establish two benchmarks with a view to taking paragraph 1(c) of GATT Article VIII¹ one step forward with respect to the benchmarks of necessity and efficiency so that due consideration would be given by Members in the formulation and implementation of formalities and documentation requirements.

26. All changes made in the current submission were related to the benchmark of necessity (set out in the first bullet in the revised text), the most prominent one being the deletion of the phrase "no more administratively burdensome or trade restrictive than necessary" and the associated footnote 1, which listed the factors to be considered when determining whether formalities and requirements were more trade restrictive than necessary to achieve their legitimate objectives.

27. The changes made to the proposal primarily aimed at addressing Members' concerns about the scope, interpretation, as well as the operation of the necessity benchmark as augmented by the factors under footnote 1, for example, whether and how weighting should be given to these factors.

28. While Hong Kong, China still believed that the benchmark of "necessity" and some, if not all, of the factors listed in footnote 1 in TN/TF/W/124/Rev.1 would be considered one way or another by Members in formulating or reviewing their formalities and requirements, it appreciated and respected

¹ The existing paragraph 1(c) of GATT Article VIII merely stipulated that Members "*recognize the need for*" minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements. It did not elaborate on how minimization and simplification of formalities and documentation requirements can be achieved.

Members' comments about the risk of being "over-prescriptive" in their approach. They would, however, emphasize the importance of establishing benchmark guideline for assisting Members in their efforts to "minimize the incidence and complexity of import and export formalities and decrease and simplify import and export documentation requirements" as enshrined in paragraph 1(c) of GATT Article VIII.

29. Against this backdrop, the revised proposal (TN/TF/W/124/Rev.2) adopted a simpler approach in the implementation of the "necessity" benchmark by requesting Members first to consider whether alternative formalities and requirements that could achieve the legitimate objectives were reasonably available, and, second, to adopt those formalities and requirements which were considered by Members to be significantly less trade restrictive. Such an approach had been drawn up with reference to the relevant rulings in dispute settlement cases regarding the interpretation of the term "necessity"².

30. TN/TF/W/124/Rev.2 did not propose any definition of terms such as "alternative formalities and requirements", "legitimate objectives", "reasonably available" and "significantly less trade restrictive", as individual Members should be entrusted with flexibility having regard to the nature and objective of their formalities and requirements in place as well as prevalent circumstances.

31. Having regard to feedback from Members, Hong Kong, China did not see the need to make major alterations to the other elements in the proposal lest the spirit of the proposal would be eroded. For example, the *benchmark of efficiency* was essential in ensuring that formalities and requirements had to be applied in an efficient manner, so that the benefits gained from the concerted efforts to strengthen paragraph 1(c) of GATT Article VIII would not be undermined by burdensome/inefficient administrative procedures.

32. As regards the proposition that formalities and requirements should not be maintained when the circumstances or objectives giving rise to their adoption no longer existed, this was also a useful guideline to assist Members in strengthening paragraph 1(c) of GATT Article VIII by ensuring that "unnecessary" and "outdated" formalities and documentation requirements could be minimized and reduced.

33. As for the *self-review mechanism* for formalities and requirements in the proposal, the sponsors had deleted the phrase "including the private sector" after "interested parties". In Hong Kong, China's view, "interested parties" were those affected by the formalities and requirements in question and as such should have already included those from the private sector. This change was also an attempt to follow the general consensus recorded in the Aide Memoire on the November 2007 meeting.

34. He also wished to take this opportunity to respond to some comments regarding Members' responsibility under the proposal, e.g., who was to decide what was an "unnecessary obstacle to trade"; whether "circumstances or objectives giving rise to the adoption of formalities and requirements no longer existed"; and what should be included as "relevant new information and business practices, availability and adoption of techniques and technology, as well as international best practices". It would not be easy to provide answers to these questions lest the risk of "over-prescriptive" would again emerge. Members would be allowed to exercise flexibility and judgement having regard to the nature and objective and their respective formalities and requirements in place and prevalent circumstances, bearing in mind that the spirit of paragraph 1(c) of GATT Article III was

² I.e. Korea – Measures Affecting Imports of Fresh, Chilled and Frozen Beef (WT/DS161/AB/R and WT/DS169/AB/R) and European Communities – Measures Affecting Asbestos and Asbestos – Containing Products (WT/DS/135/AB/R).

to "minimize the incidence and complexity of import and export formalities and decrease and simplify import and export documentation requirements."

35. It was hoped that the proposed revisions contained in TN/TF/W/124/Rev.2 would help Members in further understanding the objective of the proposal and facilitate collaboration in the collective drafting process. Drafting suggestions from Members would certainly help Members in further refining the proposal.

36. The representative of the United States introduced proposal TN/TF/W/144/Rev.2, explaining that it was a further revised version of its submission on expedited shipments in which the US attempted to address the comments received during the previous meetings and consultations. Three types of changes had essentially been made.

37. The first related to some of the terms used. A second addressed numerical threshold issues with the third type consisting of non substantive clean-up changes.

38. The change to paragraph 1 involved the change to a term used in order to address concerns that had been expressed with the reference to establishing separate customs procedures for expedited shipments. In order to be less prescriptive, the word "separate" had been deleted and the word "allowing" added. This left it to each Member to decide how it wished to provide for express shipments under its customs procedures.

39. The change to paragraph 1(b) also involved a change in a term. The use of the word "manifest" had provoked questions as to whether this was a term of art. Therefore, the word "manifest" had been replaced with the term "single document" throughout the proposal. The substance of the definition at the end of the proposal remained unchanged but now defined the term "single document".

40. The change to paragraph 1(d) was related to a numerical threshold. Members had expressed concerns about the one-hour timeframe in sub-paragraph (d). As a result, the figure had been increased to three hours. The text also made clear that that was meant to be the timeframe under normal circumstances. Paragraph 3 of the proposal made clear that even this timeframe would not be applicable where necessary to maintain appropriate border control.

41. No fundamental change had been made to paragraph 1(e). Instead, the United States had engaged in some cleaning-up, adding the phrase "to expedited shipments" to clarify the commitment and to match the language in the other sub-paragraphs. The US realized that some Members had expressed concerns that the proposal applied without regard to weight or customs value and wished to continue discussing these concerns with Members in order to understand them better, but it was essential that businesses and consumers were not denied the benefits of expedited shipment delivery simply because the goods were valuable and/or heavy.

42. Such shipments could be particularly important for spare parts and supplies that were essential to a just-in-time economy. Paragraph 3 made clear that Members were free to take steps to maintain border controls. The absence of weight or value restrictions would also not prevent the collection of duties on these items.

43. Paragraph 1(f) involved a clean-up change. A footnote had been added that explained that sub-paragraph (f) might not be necessary if the separate proposal on this topic, TN/TF/W/136/Rev.1 – separation of release from clearance – adequately addressed this issue.

44. The threshold had been changed in paragraph 1(g). Several Members had expressed concerns with the *de minimis* level set forth in sub-paragraph (g). The provision had therefore been revised so

that each Member was free to set its own *de minimis* thresholds. Some exemptions were required, but the exact amount was not prescribed.

45. As a clean-up in paragraph 2(b), "manifest" had been replaced with "single document". Consistent with the changes to paragraphs 1(b) and (c) and in sub-paragraphs (c), the word "separate" had been deleted. The benefits of the proposal were broad. Expedited shipments benefited everyone associated with those transactions. Large and small companies depended on this mode of shipment for timely, dependable and cost-effective delivery of parts, accessories and final consumer and industrial goods. Expedited shipments supported just-in-time production, lowered inventory costs and facilitated fast product to market.

46. The benefits were particularly great for SMEs which could use expedited shipments to overcome many of the logistical advantages of larger companies that had international experience. All that small businesses needed was an internet site and the ability to make an expedited shipment and perhaps a description of how to import on the importing country's website to become a global company.

47. Expedited shipments made possible trade that might otherwise not occur, in particular for smaller companies. It was fair to say that that mode of transport was taking an important place alongside rail, truck and ocean freight in the global economy. For all of those reasons, the proposal could make an important contribution to facilitate trade. The US looked forward to discussing it further with Members.

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

49. The plenary was adjourned.

50. 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

51. 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.

52. It was so agreed.

C. OTHER BUSINESS

53. The Chairman addressed the issue of the Group's next meeting, informing that a tentative slot had been reserved for the week of 7 April.

54. The meeting was adjourned.
