

Negotiating Group on Trade Facilitation

SUMMARY MINUTES OF THE MEETING

Held in the Centre William Rappard
from 26-30 May 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/3187. As indicated in the airgram, the meeting sought to address a number of newly submitted proposals and to advance work in the areas of technical assistance and S&D. In addition, Members would address the regular item of participation by the Annex D organizations.
2. The agenda was adopted.
3. The Chairman shared his plans for the proceedings of the negotiating week. The structure of the session reflected its targeted objectives, focussing on (i) the new proposals received on various elements of the mandate, and (ii) the crucial issues of technical assistance and S&D. About half of the time would be devoted to each domain, starting with the novel contributions submitted by the membership. To facilitate their discussion, they had been grouped by the main area they related to, ranging from the three GATT Articles – in descending order - to the customs cooperation side. Questions linked to TACB and S&D would be taken up as of Wednesday, with the following day equally being dedicated to this field. Friday would see Members address a few additional matters – such as the needs assessment area and the work of the Annex D partners – before concluding in plenary mode.
4. Work on all elements of the agenda would take place in a variety of formats to allow for a maximum of flexibility. The mornings of the sessions would be conducted under his chairmanship in open-ended, informal mode. He also intended to chair part of the afternoon discussions while equally leaving room for engagements amongst the membership. The afternoons of Tuesday, Wednesday and Thursday had been reserved to that end.
5. 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 about progress made and yet to be achieved. A report would also be provided from his side, offering a personal evaluation of this week.
6. All of this would hopefully allow Members to have another constructive meeting that moved them an additional step ahead on their negotiating path. He did not have to remind them of the amount of work still ahead and the limited time at their hands for its completion.
7. The opening plenary was adjourned and the informal working sessions commenced.

A. NEW AND REVISED PROPOSALS

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

9. The representative of Switzerland introduced proposal TN/TF/W/155 on publication and availability of information on behalf of the co-sponsors Hong Kong, China, Japan, Mongolia, Norway, Turkey and Switzerland.

10. The introduction would be very brief for two reasons. First, the proposal had just been circulated to Members and colleagues might need more time to study it thoroughly. It might therefore not seem judicious to go into the details of the text straight away. Secondly, Members would have a chance to exchange views more extensively than the heavy schedule of the current morning session would permit. This would take place in the form of an informal discussion to be held on Thursday, from 3 to 4.30 p.m., with a view to providing a forum for an informal exchange and discussion on Article X proposals.

11. The new text was closely based on the proposals on publication and availability of information that had been made in communications TN/TF/W/114/Rev.1 and TN/TF/W/132/Rev.1. The co-sponsors proposed for this new proposal to replace TN/TF/W/114/Rev.1 and TN/TF/W/132/Rev.1 in the next revision of the compilation document (TN/TF/W/43/Rev.15) and its subsequent revisions, except for the text on prior publication and consultation contained in TN/TF/W/132/Rev.1.

12. In consolidating these two textual proposals into the current submission, the co-sponsors had taken into account the previous discussions on the subjects in the Negotiating Group. Working together in the format of a Focus Group, they were happy to report that a close collaboration of the proponents had brought about good results, as the present text and the enlarged list of co-sponsors proved.

13. Switzerland hoped that the proposal would take Members a step forward in the Focus Group's efforts to further consolidate and converge related textual proposals.

14. The representative of Canada introduced proposal TN/TF/W/153, noting that it had already been discussed informally. Australia, Canada, Turkey, and the United States were pleased to be able to present a joint proposal on advance rulings. The proposal set out the nature of the obligation sought, calling for Members to issue an advance ruling and for them to establish and make public certain provisions related to such advance rulings. Importantly, it was made clear that an applicant would receive a response when the Member was unable to issue an advance ruling or declined to do so.

15. The proposal also established that an advance ruling would be valid for a certain period of time after its issuance. It set out that the Member should publish the time for an advance ruling to be issued as well as the validity period and the information that needed to be provided. The proposal set out that a Member should provide for a review to allow applicants to better understand the decision or to provide further information. It established that a Member should endeavour to make available information on advance rulings of significant interest to traders.

16. Finally, the proposal set out several key definitions. The four proponents had worked together to reflect the views of the Membership and were hopeful that the new proposal would be favourably received.

17. The representative of Korea introduced TN/TF/W/138/Rev.2 on behalf of Korea, Singapore and Thailand, explaining that it was the second revision of the original proposal on the issue of Single Window. It had been submitted last March. As Members might recall, during the course of the negotiations, the Single Window proposal had attracted great interest and encouraged many Members' continuous support.

18. Korea had taken careful note of the various comments and suggestions expressed by some Members on the previous version of the proposal. The sponsors continued to believe that the Single Window would be one of the most efficient and effective tools for trade facilitation and should therefore be a key element in the Trade Facilitation Agreement.

19. The sponsors had made efforts to reflect those comments as much as possible in order to increase the comfort for all Members. In the revision, they particularly made good use of the Aide Memoire as contained in Job(08)/13 which had been helpful to track Members' specific comments on the proposal. Korea wished to express special thanks to the Secretariat for providing Members with this document.

20. In terms of the main changes made in the second revision of the proposal, a simple way of characterizing them would be to say that they sought to consider Members' realistic difficulties in implementing the Single Window while trying to clearly define Members' commitments by adding more clarity to the function of the Single Window.

21. The sponsors recognized that the Single Window was still under evolution with an increased participation of relevant agencies and of the technological development. With respect to the specific changes made, the explanations would focus on the first, second and sixth bullet points of the textual proposal while then also briefly explaining the minor changes introduced in other paragraphs.

22. Under the first bullet point, the sponsors had replaced the wording "provide for" with "maintain or establish" to clarify the meaning. They had added a footnote illustrating the definition of the Single Window, quoted from the UN/CEFACT Recommendation. However, the sponsors were still open to suggestions on how to address the definition of the Single Window in the WTO context.

23. They had also expanded the scope of the Single Window to include transit as indicated in previous meetings. In an effort to address confidentiality concerns expressed by some Members, the sponsors also complimented the second sentence to ensure that the documentation and/or data requirements were distributed only to the relevant authorities or agencies.

24. More importantly, the sponsors had added a new sentence to further specify a function of the Single Window which, in their view, helped to clearly define Members' commitments. Some Members had repeatedly posed questions about the definition and the coverage of the Single Window with others pointing out the need to more distinctly define the commitments.

25. In terms of how the Single Window operated, it received documents and/or data requirements from the applicants and distributed them to the relevant authorities or agencies. In the same way, the Single Window would receive the result relating to the documents and/or data requirements back from the relevant authorities or agencies and would deliver them to the applicants.

26. The applicants could also submit licensing requests through the Single Window which sequentially distributed the documents and/or data requirements to the relevant authorities and delivered the results issued by the authorities to the applicant at the end of the process. However, this was only possible to the extent that the relevant authorities were included in the participating authorities.

27. Some delegations had sought clarification on whether the Single Window included broader cases such as licensing requests handled by the Agriculture Ministry. That was indeed the case.

28. Under the second bullet point, the sponsors had specified the exceptional cases allowing for additional requests for documentation and/or data requirements by other agencies under very limited circumstances.

29. Under the sixth bullet point, the sponsors replaced the phrase "administrative capacity" by "implementation capacity" which could cover broader national situations such as inadequate infrastructure, financial resources, institutional constraints and the like.

30. Some Members had pointed out the necessity of fixing a minimum number of participating authorities or agencies while other Members had called for a need to limit the scope of participating authorities and agencies. Those comments had not been reflected in the revision since the sponsors believed it was better to leave this decision to each Member, taking into account its own national situation.

31. However, attention should be drawn to the third bullet point where the sponsors specified Members' obligations to notify other Members the details of the operation of the Single Window, including the participating authorities and agencies. That was an important element for the success of the Single Window since it ensured the transparency of each Member's Single Window system.

32. The revision also contained some minor changes. A second footnote had been added in consideration of some Members' calls for the notification to be covered in the proposal on GATT Article X. The reference to the WCO Revised Kyoto Convention had been removed as some Members had pointed out that it did not regulate the operation of a Single Window.

33. Lastly, the sponsors had moved the sentence on the overall S&D treatment from the chapeau to the end of the textual proposal. Korea hoped that the given explanation helped Members understand the revised paper and gave more comfort to all. The Korean delegation was interested in discussing the proposal with interested Members.

34. The representative of Canada introduced proposal TN/TF/W/128/Rev.1, expressing appreciation for the support received for the proposal as part of the trade facilitation negotiations. Canada was also pleased that Norway had decided to co-sponsor the document.

35. Canada had heard comments from Members that the previous version of the proposal was too prescriptive in detailing the manner in which cooperation would take place. Ottawa saw the proposal as having two parts.

36. The first related to the border agencies within a Member which should cooperate. As all of those agencies fell under the purview of a Member, this cooperation could be set out in stronger terms.

37. Accordingly, the language had been strengthened to read that the agencies "shall cooperate and coordinate". The revision also no longer contained the prescriptive elements which Canada had understood to be problematic for a number of Members.

38. The second part related to the cooperation between two bordering Members. Given the geographic, physical and economic realities faced by many Members, the nature of that commitment had to reflect some of those challenges.

39. Canada had heard general support for prescribing the alignment of working hours and days as a concrete measure that could bring tangible benefits to traders. In this way, that element had been modified. But the element on common customs facilities had been removed.

40. The representative of Turkey presented proposal TN/TF/W/146/Rev.1 by Turkey, Georgia and Paraguay on freedom of transit. The discussions on freedom of transit in the Negotiating Group and the older version of the current proposal had been taken into account in the preparation of the revised text.

41. Turkey was concerned about restrictions in transit traffic that occurred on various occasions. These restrictions caused significant economic losses both on the producer and consumer side. Turkey believed that a real clarification and improvement of the freedom of transit principle could not occur without reaching effective solutions that would discipline the restrictions on transit and ensure transparency.

42. Within that context, the proposal had been prepared to be a basis for a reasonable and balanced solution to the problem. In line with the spirit of GATT Article V, such a solution should aim at achieving freedom of transit in a way that saw freedom of transit as the principle with restrictions only being allowed in exceptional cases.

43. That was by no means a new approach but merely a clarification and reflection of the existing legal situation for the special case of freedom of transit. Since there were no explicit exceptions stated in GATT Article V, the only legitimate exceptions to freedom of transit might result from GATT Articles XX and XXI in extremely rare cases.

44. There was extensive jurisprudence by both the dispute settlement body and appellate body on how a trade restrictive measure could be applied to fulfil a legitimate policy objective that could be considered to fall under the scope of GATT Article XX. The restrictive measure should pass a certain necessity test to be considered to legitimately fall within the scope of Article XX. In addition to contributing to one of the legitimate objectives set out in Article XX and to complying with all the clauses of the Article, the measure should be the least trade restrictive for achieving the declared aim. In other words, a trade restrictive measure could not be considered necessary if there were GATT consistent or less inconsistent ways of achieving the same policy objective. This was the main logic applied by the Appellate Body on the question of how a trade restrictive measure could be justified as constituting a legitimate exception set out in Article XX. For Turkey, there were no reasons to believe that GATT Article V lays outside that scope.

45. The revised proposal aimed at nothing more than to ensure that the same logic was applied to freedom of transit. Articles 3, 4 and 5 of the proposal tried to ensure a progressive check that the measure restricting transit was the least trade restrictive way of achieving the declared objective by the restricting Member.

46. Taking into account a sense of the freedom of transit principle and the uniquely strong wording attached to trade in the GATT text, such a procedure was strictly necessary to ensure that the freedom of transit principle was not arbitrarily violated. The current proposal also aimed at associating elements of transparency with ensuring freedom of transit.

47. Finally, the proposal tried to ensure that fees and charges for transit were commensurate with the cost of service rendered and that they were applied in a non-discriminatory and transparent manner.

48. The representative of Canada introduced proposal TN/TF/W/154. While Canada appreciated the revised proposal on Customs Cooperation by India, South Africa and Sri Lanka it believed that,

despite the revisions that had been made, previous comments made by Canada and other Members were still not adequately reflected. Judging from Members' comments as expressed in the February meetings, it appeared that a chief concern focused on confidentiality issues. It certainly was Canada's main concern.

49. As previously stated, Canada felt that any such proposal must ensure that all exchanged information would be treated with the same level of protection required under the laws of the requested Member. That was necessary as traders provided this information to customs with the understanding of the protection afforded by domestic laws. To betray that understanding, including through third party disclosure, jeopardized the trust between traders and customs administrations, and could result in traders not fully disclosing information essential to efficient customs processes out of the fear that this business information would not be properly safeguarded. Such action would cause the exact opposite result to the objective of these negotiations. It would impede effective customs processing, and therefore not be trade facilitative.

50. Based principally on these concerns, and using the language from the WTO Ministerial Decision 8.3, which addressed situations where there was reason to doubt the truth or accuracy of a declaration, and building upon elements of the current Indian proposal, Canada had put forward a proposal on Customs Cooperation, TN/TF/W/154.

51. The intention when drafting this proposal had been to support the key objectives of those Members who had stressed the importance of this type of proposal, while incorporating the protections which were equally fundamental.

52. It should be noted that W/154 sought to incorporate and complement some of the key concepts which had been put forward on customs cooperation by the World Customs Organization. As noted on its website, the WCO was the "only intergovernmental organization exclusively focused on Customs matters, and... was recognized as the voice of the global Customs community."

53. On the topic of customs cooperation, the WCO had put forward the Johannesburg Convention. Although the Johannesburg Convention had a limited number of signatories for different reasons and Canada found many of its provisions problematic, it should be noted that it included an article on Exemptions and Reservations that allowed Members to use discretion, based upon legitimate concerns, when responding to requests for information. This provision, which was noticeably absent from proposal TN/TF/W/123, as Canada had noted during previous meetings, was important to WCO members and was included in TN/TF/W/154.

54. In addition, the WCO Johannesburg Convention limited the scope, in Article 2, paragraph 2, to ensure that any activity carried out was done in accordance with the legal and administrative provisions and within the competence and resource limitations of the customs administration. Building on this concept, TN/TF/W/154 contained language which set out that the sharing of any information needed to be done on mutually agreed terms.

55. W/154 also limited the scope of the information to valuation information. This was done based upon the comments of Members, who had stated that they wanted to address situations where there was a reason to doubt information received in support of the valuation of goods. Since this was the situation that Members were seeking to address, this proposal focused on valuation.

56. In addition, W/154 provided Members the ability to decline a request when they were not convinced that the request was justified or that the confidentiality of the information would be maintained. Furthermore, it required a requested Member's express consent for disclosure, including in judicial or administrative proceedings.

57. Finally, if the exchanged information was improperly disclosed, W/154 permitted the preclusion of further information sharing with that Member.

58. This provision sought to make certain that the obligation for adequate protection of information was undertaken by the requesting member. Moreover, it underlined the belief that effective customs processing was built upon trust between the traders and customs administrations. Once information was improperly disclosed, that trust was broken and the customs administration had to undertake all steps necessary to rebuild that trust. Canada believed that precluding any further requirement to share information, once information was improperly disclosed, was a necessary step to rebuilding that trust.

59. In addition, W/154 included a provision to ban Members from implementing a requirement that importers provide customs authorities with copies of export declarations, in order for goods to be imported. As previously noted, this practice that had been encountered by Canada was a misuse of export declarations and an unnecessary barrier to trade.

60. It was hoped that W/154 would effectively balance the desires of some Members for this type of customs cooperation against the legitimate needs of business to protect their confidential information. It sought to ensure that a WTO customs cooperation proposal was consistent with, and complementary to, that put forward at the WCO.

61. Finally, W/154 was based upon the premise that it was in the best interest of customs administrations to share information to combat customs offences, so when appropriate, they would do so. Given the recent significant increase in bilateral customs cooperation arrangements, many customs administrations obviously agreed. However, this proposal allowed customs administrations discretion in such cooperation, mindful that the exchange of information for enforcement purposes must be balanced by adequate protection of confidentiality.

62. Canada would be happy to meet with interested Members to discuss its proposal and these comments in more detail.

63. Explicit requests for inclusion in the minutes of the meeting were also made with respect to the following interventions:

64. The representative of Honduras wished to express that Honduras considered the technical assistance provided to different countries by various WTO Members to be of the outmost importance. The same opinion was sustained with respect to Trade Facilitation which was a topic where the private sector gained as much as the public one, saving time and resources.

65. The negotiating mandate clearly stated that assistance would be provided before and after the negotiation. In the case of Honduras, technical assistance had been received to conduct the self-assessment exercise. Honduras had also participated in various seminars both in the capital and in other countries where the potential benefits of Trade Facilitation had been discussed, an exchange had taken place between the technical experts in the capital and the delegates in Geneva. The responsible directors, customs and trade experts had been made aware of what was going on in the negotiations, the topics discussed and the preparation required for the possible entry into force of the agreement. All of that were benefits that derived from the provision of technical assistance.

66. Among the organizations that had provided and continued to provide technical assistance was AITIC, the Agency for International Trade Information and Cooperation. Many developed Members collaborated with that agency and therefore contributed to the application of the mandate to provide technical assistance prior to the negotiations. Honduras urged all those Members to continue supporting this agency for it to continue assisting the small economies and the LDCs.

67. The representative of Kuwait, speaking also on behalf of Bahrain, Qatar and the United Arab Emirates, wished to inform the Negotiating Group that the respective governments of those countries had concerns about the joint proposal submitted by the delegations of Uganda and the United States regarding the prohibition of consular transactions, including related fees and charges (TN/TF/W/104). The mentioned proposal was still under review by the governments of Kuwait, Bahrain, Qatar and the United Arab Emirates. Bilateral consultations had been conducted in that regard with the proponents during the last meeting of the NGTF and contact with them would continue in order to find common ground on this issue.

68. The representative of Egypt said that Egypt opposed the proposal referred to by the Kuwaiti delegation (TN/TF/W/104). Egypt was against the cancellation of consular transactions and consular fees.

69. The representative of Uganda said that, as an LDC, Uganda felt that the removal of consular fees and charges would greatly facilitate trade. It would make it possible to have free trade amongst WTO Member states. Uganda would make a formal statement on this issue at the July meeting.

70. The representative of the United States appreciated that some countries relied on consularization fees for revenue. This had been the case for several of them over the years, in the GATT and the WTO, with some of them eliminating them and a few others imposing them. Uganda and the United States had done some research on the matter and found that this had been on the agenda of the GATT since its inception, since 1948 and 1952. The US would try to make that information available before the next meeting for the consideration of the membership.

71. The representative of Egypt wished to follow-up on what been mentioned by the US delegation about them appreciating that some countries relied on consular fees for revenue. Egypt's opposition had nothing to do with revenue issues. It stemmed from the simple fact that the US/Ugandan proposal went beyond the mandate of clarifying and improving GATT Articles V, VIII and X.

72. The proposal clearly changed Article VIII which clearly indicated the right of any country to collect consular fees. It only requested a limitation of those fees. Egypt was more than open to talk about how those fees could be limited, how concerns could be addressed and to discuss whether fees might be high in certain cases. It was open to discuss certain criteria on how to collect those fees, the timing for processing consular transactions etc. But Egypt did not accept changing GATT Article VIII as that went beyond the mandate.

73. The representative of Kuwait wished to clarify that the fees were not collected for revenue purposes. Kuwait supported the statement made by Egypt.

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

75. The plenary was adjourned.

76. 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

77. 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.

78. It was so agreed.

C. OTHER BUSINESS

79. The Chairman addressed the issue of the Group's next meeting, suggesting to hold it from 14-18 July. Details would be communicated at a later stage.

80. It was so agreed.

81. The meeting was adjourned.
