

Negotiating Group on Trade Facilitation

MINUTES OF THE MEETING

Held in the Centre William Rappard
from 29 June – 3 July 2009

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

1. The Chairman recalled that the proposed agenda for the session had been circulated in WTO/AIR/3389. As Members would have noticed from the airgram, the meeting sought to advance the work of the Negotiating Group (NG) on all elements of the mandate, concluding the cycle of refining the proposals it had initiated in February. In addition, delegations would test a new, accelerated way of addressing those texts in the framework of a special drafting session. Time would also be given to looking into the regular item of participation by the Annex D organizations.
2. The agenda was adopted.
3. The Chairman shared his ideas on how he wished to organize the Negotiating Group's work over the course of the week.
4. The meeting's three primary objectives – concluding the current cycle of reviewing Members' proposals, testing a new, focussed way of addressing them, and advancing work on S&D – were reflected in the structure of the sessions, dedicating time to each of those tasks.
5. Work would commence with the introduction of new proposals. This would then be followed by their detailed discussion - as well as a review of the previously submitted texts - in the context of a series of informal working sessions, which were scheduled to commence right after the end of the opening plenary. GATT Article VIII-related proposals would be addressed first, continuing Members' work from where they left it off in May. From there, delegations would move to the Article V and the customs cooperation domain.
6. Technical assistance and S&D matters would be the focus of attention on Thursday. Work was going to be led by the Friend of the Chair who would then use the following day to report to the plenary on the outcome of his activities. Friday would also update Members on the state of the Secretariat's needs assessment programme before concluding the meeting.
7. The Group's mode of operation remained unchanged. Members would continue their tradition of conducting most of the exchanges in open-ended, informal mode. The presentation of new submissions would be considered formal while their detailed discussion remained off the record.
8. The plenary session was adjourned and the informal working sessions commenced.

A. NEW AND REVISED PROPOSALS

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

10. The representative of Korea introduced proposal TN/TF/W/138/Rev.3, explaining that during the discussions and workshops over the past few years, Members had come to realize the usefulness of a single window to trade facilitation. They had been able to enhance their understanding of the single window proposal and several Members had already started to provide traders with a single window scheme even though the proposal was still under discussion. It was in that context that Korea, together with Singapore and Thailand, submitted the third revision of their Single Window proposal, reflecting the valuable comments raised by other Members. The main changes were the following:

11. In the third sentence of the first bullet, new language had been created. The text now read: "After the examination by the relevant authorities or agencies of the documentation and/or data, the single window shall notify the results to the applicants in a timely manner".

12. During the previous meeting, several Members had raised concerns about whether the relevant authorities or agencies could notify the result to the applicants. The single window had a primary responsibility to give a reply to applicants. However, the sponsors did not oppose the idea that the relevant authorities might be allowed to provide the examination result to the applicants, if necessary.

13. In bullet 3, the words "which may include" had been changed into "including", as indicated at the previous meeting. The language identified the minimum elements which Members should notify to the Trade Facilitation Committee.

14. In order to strike a balance between specificity and flexibility of commitments, the sponsors wished to maintain bullets 2, 4, 5 and 6 as they had been, except for minor linguistic changes.

15. It was hoped that the revision would give Members more comfort to understand the single window proposal.

16. The representative of Switzerland introduced document TN/TF/W/133/Rev.3, noting that it represented a small revision of the previous version of the proposal. Initially, the sponsors had not planned to prepare a revision. But since the Chair had invited all delegations at the last meeting to provide revisions as fast as possible, they had tried to integrate those elements of other Members' remarks which seemed less controversial and had also used the opportunity to make certain corrections. There had been a corrigendum to the last revision of the proposal which had now been integrated into the main text in order to have a common basis for Members' work in the future. No major revisions of the substance had been intended as there had not been enough time to consult in detail with all the Members concerned. The main changes were the following:

17. In the first paragraph, there had been a small change in the form of an addition. In the last sentence, the word "traffic" had been added so that the text now read: (...) "shall be deemed to be *traffic* in transit". This correction had been made to avoid misunderstandings and to make sure that the means of transport should not in themselves be considered a good in transit but part of "traffic in transit" as defined in the first part of the paragraph.

18. The word "warehousing" had been added in the first paragraph as well. This had been suggested several times with respect to the last revision of the proposal in order to make the text

consistent with GATT Article V. The omission had simply been a mistake when translating the wording of GATT Article V in its current form. There was no change in substance.

19. In paragraph 2, the sponsors had tried to streamline the wording. They had deleted the words "establishes or maintains a State enterprise, wherever located, or". The reference to "State enterprise" did not seem necessary. The text appeared clear enough without those words, which was why that part of the sentence had been deleted.

20. The previous version of the proposal had contained a reference to general and security exceptions. The co-sponsors assumed that such a reference would, if at all, be of a cross-cutting nature and had therefore deleted it from the current proposal. There was, however, no change in intention. GATT Articles XX and XXI would fully apply, the way they always had.

21. Paragraph 4 contained a new addition in brackets: "[for traffic in transit to or from the territory of other contracting parties]". It made the text consistent with GATT Article V, but, at the same time, reduced the level of ambition. Members would have to discuss further what level of ambition they wanted. This was subject to further discussion. It had been put into brackets to highlight the need for further clarification.

22. In paragraph 5, the sponsors had changed the wording and substituted "contracting parties" with "Members". This had been done to make the wording consistent. There was no change in substance.

23. In paragraph 6, the title "National Treatment" had been dropped as it did not add anything to the text and was misleading. Members might recall that some of the discussions on this paragraph had been on the question of what the benchmark for such treatment would be, and, as the sponsors proposed to take import and export traffic as benchmarks, and not domestic traffic, "national treatment" was a misleading title. Furthermore, the benchmark had been changed slightly. Instead of "its own exports or imports" it now said "its own export or import traffic". The change had been made to make the wording more consistent with GATT Article V which was about "traffic in transit" as opposed to just "transit". There was an elaborate definition of "traffic in transit" in paragraph 1 of that Article and the sponsors had wanted to make sure that the language of their proposal was as close to that as possible. There was no change of intention behind the new wording.

24. Still in paragraph 6, the sponsors had added the clause of the principle referring to "like products being transported on the same route under like conditions". It was identical to the one already contained in GATT Article V.

25. In paragraph 8, the wording had been revised a bit, especially with respect to the second part of the first sentence. The language of the earlier version of the proposal had not been that clear and the issued corrigendum on the matter had not really brought more clarity. The new wording was proposed for smoother reading. The intention remained the same. The idea was to extend the protection offered by GATT Article V:6 to goods not only retroactively, but also pro-actively, so as to exclude discrimination based on future transit. It was a marginal correction, a marginal improvement of the text and there were probably only very few situations where this could be applied. A possible case of application could be a landlocked country which played off two ports in different neighbouring countries who depended on revenue from traffic in transit by steering traffic one way or the other through unequal treatment ex-ante of transit.

26. With respect to paragraphs 9 to 12, it had been remarked at the last session that the wording was not consistent. The sponsors had therefore tried to make it more consistent. Given that transit duties and fees were forbidden, there was no point in having disciplines on them. Disciplines were only needed on charges. The wording had been made more consistent with that intention. Paragraphs

10 to 12 could be dropped in later revisions of the text if Members agreed to take on board "transit" in the scope of Article X provisions on publication and availability of information.

27. In paragraph 13, there was a new addition in the chapeau. The words "and where applicable" had been added at the end to take account of the fact that many of the disciplines in this paragraph were applicable only to certain means of transport and to make the whole paragraph less prescriptive. This also intended to address, at least to some extent, the concerns that had been expressed with regard to the scope article and the inclusion of wording on infrastructure by making sure that the disciplines would only apply to means of transport where that made sense.

28. The same intention was behind the change in paragraph 13.(i) where "lanes" had been replaced by "transit infrastructure" to ensure that applicable means of transport were not artificially limited.

29. There was a partially new paragraph, paragraph 14. It contained reservations and had been moved to a new paragraph in order to make sure that all provisions in paragraph 13 were covered. It also served to clarify the original GATT Article V wording. If one read Article V very closely, and literally, it could be understood to mean that one might delay goods unnecessarily if there was a breach of law, which certainly was not the intended meaning. All that was actually implied was that that goods could be delayed, but not unnecessarily.

30. With respect to paragraphs 15 and 16, a change had been made to accommodate a comment made, putting "requires a guarantee" instead of "operates a guarantee system".

31. In paragraphs 18 and 20 (iii), the term "authorized trader" was used instead of "authorized economic operator" to make the wording consistent with that of other proposals.

32. In paragraph 17, the sponsors had put brackets around the paragraph to indicate that there were some fundamental issues with this paragraph that had to be discussed. Reading the comments in the worksheets, one saw that there were a number of comments that had not been addressed in the current revision of the text. Nevertheless, they had certainly been noted by the sponsors who hoped to be able to deal with them at a later stage.

33. In paragraph 20, a small typo had been corrected, making clear that it should be the plural form with respect to the words "agreements or arrangements". Furthermore, the term "contracting parties" had been replaced by "Members" to ensure consistency in the use of language. "Members" meant Members of the WTO while "contracting parties" meant contracting parties to the international agreement which the provision was about.

34. In paragraph 20 (v), "infrastructure" was used instead "road" to make sure that all means of transport were covered and that there was no artificial limitation to road transport.

35. Finally, in paragraph 22, the word "adequate" had been deleted to accommodate comments made by Members at the last session.

36. Those were the changes made. They mostly consisted of changes in wording. There was no change in intention. While some of Members' comments had not been taken into account, their concerns had been noted and the sponsors hoped to discuss them further bilaterally.

37. One of those concerns related to how to deal with GATT Article V's specification that freedom of transit was only valid "for traffic in transit to or from the territory of other contracting parties" and the question of its precise meaning. Did "to or from" refer to neighbouring countries or

to the first origin and the ultimate destination of the traffic? The level of ambition and the wording required further clarification.

38. A second point related to the question of how to introduce the possibility of applying non-discriminatory measures to limit traffic in transit in order to protect the environment or the infrastructure. Switzerland believed that, to a certain extent, it could be done with the provision formerly called "national treatment", but there were clear indications that the matter required further discussion.

39. A number of delegations had made comments with regard to paragraph 22 on regional transit agreements/arrangements, wondering how to limit the provision so that only Members capable of complying with the substantive criteria required for the participation in such regional agreements could profit from the discipline. Further reflection was required on how to integrate that point into the text.

40. Another comment related to the obligation not to introduce a guarantee system for countries using other methods to prevent inland diversion. Some wording had to be found on how to address the issue.

41. Finally, some concerns had been raised with respect to the express inclusion of wording on infrastructure in the provision on scope. While there had been some very useful discussions at the bilateral and plurilateral level, it had not been possible to reflect the matter in the present revision. The co-sponsors hoped to work further in the future with all Members that had made comments on the text.

42. The representative of Turkey introduced document TN/TF/W/146/Rev.2, explaining that it was a revision of an earlier version of the proposal on a free and transparent transit regime. It had been prepared on the basis of the valuable comments made by delegations in the Negotiating Group and during bilateral talks with landlocked developing Members.

43. The revised proposal was shorter, simpler, more practical and realistic without losing its main intention of improving freedom of transit and enhancing transparency in transit regimes.

44. Looking at the proposal in more detail, one saw that the first paragraph had been deleted as a result of it having attracted some criticism for being too strict. The second paragraph in the earlier version of the proposal had become the first of the current version with some modifications. The expression "shall be applied in a transparent manner" had been deleted since there was already a transparency requirement in paragraph 3. Paragraph 3 of the old version of the proposal had been kept as paragraph 2 of the current version without changes. Since transit was a relatively new area in terms of judicial interpretation, one had to use the chance offered by the current negotiations to clarify the relationship between the freedom of transit principle and its exceptions.

45. The elements in paragraph 1 and in paragraph 2 were nothing but an application of the current WTO jurisprudence on how provisions dealing with exceptions were interpreted to this specific case of transit.

46. The notification mechanism for restrictions to transit set out in paragraph 4 of the old version of the proposal had been kept in slightly modified form. The necessity element had been deleted because it had also attracted some criticism by some Members for going too far. In the revised version, the elements to be notified were the objective and the duration of the restriction. The details of the notification process were open to further discussion. This might include the question of which types of measures had to be notified.

47. Paragraph 5 of the older version of the proposal had been left out based on the comments and suggestions by interested Members. Paragraph 6 of the previous version on fees and charges had also been deleted since this issue had been treated in detail in proposal TN/TF/W/133.

48. Paragraph 4 of the new version contained a national treatment principle for transit. In line with the spirit of Article III of the GATT, the provision compared transit traffic with domestic traffic. The provision was intended to apply to transit traffic under like conditions. It targeted regulations like weight limits, speed limits, fees collected for the use of highways, fees collected for other services utilized by transit and domestic traffic under like conditions or environmental regulations.

49. Turkey was open to Members' responses to the proposal and ready to reply to their questions.

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

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 Negotiating Group's next meeting, suggesting to hold it from 5 - 9 October. Details regarding its content and structure would be communicated to Members in due course.

54. It was so agreed.

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

56. The meeting was adjourned.
