

Negotiating Group on Trade Facilitation

SUMMARY MINUTES OF THE MEETING

Held in the Centre William Rappard
from 13-17 October 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/3233/Rev.1. As indicated in the airgram, the meeting sought to continue the textual work on all elements of the mandate, looking also at the areas of technical assistance/capacity building (TACB) 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 outlined his plans for the negotiating week. The structure of the session resembled that of the last meeting. It reflected the targeted objectives, seeking to advance the textual work on the proposals under consideration. The individual contributions would be taken up in the order of their listing in the compilation document, starting with where Members had left it in July. The Tuesday had been reserved for activities amongst the membership. He understood that several delegations wished to engage in bilateral and plurilateral exchanges, the way they had done during previous sessions.
4. Questions linked to TACB and S&D would be taken up on Thursday afternoon. Friday would see Members address a few additional items, such as work on assessing Trade Facilitation needs, before concluding in plenary mode.
5. In terms of mode of operation, Members would continue their tradition of conducting most of the exchanges in open-ended, informal mode. Those working sessions would be complemented by plenary discussions at the beginning and the end of the week.
6. The opening plenary was adjourned and the informal working sessions commenced.
- A. NEW AND REVISED PROPOSALS
7. This part of the meeting was conducted in informal mode with the exception of the following interventions:
8. The representative of Switzerland introduced proposal TN/TF/W/133/Rev.2 by the former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland, and Swaziland, explaining that there were major and minor changes to the previous version contained in TN/TF/W/133/Rev.1. Some of the changes related simply to language. The sponsors had taken into

account the comments made at the last NGTF session in February and had made some restructuring in response.

9. Before going into the changes made, he wished to flag three corrections to the text Members had just received. The first related to paragraph 9, which was the paragraph on treatment preceding and following transit. In the fourth line of the paragraph, the word "wouldn't" should be replaced by "would not" so that the sentence read: "Each Member shall accord to products and means of transport which had been or would be in transit through the territory of any other Member treatment no less favorable than that which would be accorded to such products and means of transport if they hadn't traveled or would not travel from their place of origin to their destination without going through the territory of such other Member."

10. The second correction concerned paragraph 18, dealing with cooperation amongst authorities. In the fifth line, the words "authorized economic operator" should be replaced by "authorized trader" to be consistent with proposal TN/TF/W/109. The same change should be made in paragraph 20, bullet (iii).

11. Finally, in paragraph 21, there were a few missing "s". It should read "agreements shall be reasonable, having regard to the conditions of the traffic" and "These agreements or arrangements". It was always meant to be the plural form. The sponsors would ask the Secretariat to issue a correction of the proposal as soon as possible so that Members had those changes officially and in writing.

12. He wished to apologise for the very short notice on which the revision of the proposal had been published. One reason for this was that, since the summer break, the sponsors had worked hard with the proponents of TN/TF/W/146/Rev.1 in an attempt to come up with a joint proposal, merging TN/TF/W/133/Rev.1 and TN/TF/W/146/Rev.1. Very good progress had been made to that end and there had been reason to believe that it would be possible to table a joint proposal for this meeting of the Negotiating Group. As a result, the submission of the revised transit proposal had been delayed. Unfortunately, time had run out in the end to find a solution to one small sensitive issue, forcing the issuing of a revision of TN/TF/W/133 instead of a new joint proposal.

13. The progress achieved over the last few weeks had nevertheless not been lost. Some of it was actually reflected in the current revision of the proposal and some would serve as a valuable building block for the work ahead.

14. The new circulated text contained a number of modifications to the earlier version. In the definition of traffic in transit, there was a new explicit inclusion of "electricity grids" as being part of the infrastructure, as had been suggested at the last meeting of the NGTF. The list nevertheless remained an illustrative one and was understood not to be exhaustive in any way. A footnote had been added, indicating that the consequences of the inclusion of the before-mentioned kind of infrastructure must be subject to further discussion. Members might wish to review the text and ensure that there were no counterintuitive conclusions. It had to be kept in mind that most of the text had been written with only transit of goods by moving means of transport in mind.

15. There was a new sentence at the end of the definition section, clarifying the extent to which the definition of traffic in transit covered the means of transport. For example, if there was a truck carrying goods exclusively destined for overseas, from a country A to the port in a neighbouring country B where the goods left that neighbouring country by ship, the goods were clearly in transit. But the truck itself was not in transit according to the definition of current GATT Article V because it did not cross two borders. It merely crossed one border. Therefore, it was proposed that there were special rules for the means of transport in transit. They should apply for the trucks when they carried goods in transit.

16. There was a new paragraph (paragraph 2) on state enterprises. The wording intended to ensure that disciplines regulating freedom of transit were not circumvented by state or private enterprises with special privileges or monopolies affecting freedom in transit. The typical example could be privately run or owned railways, highways, ports, or airports enjoying a de jure or de facto monopoly. The text was loosely based on GATT Article XVII. At the time of drafting GATT Article V, most infrastructure relevant for transit was government-owned so that this problem had not been so relevant. That had changed. There seemed to be merit in making sure that freedom of transit and related disciplines were not circumvented by private enterprises or government enterprises.

17. In paragraph 3, the wording had been clarified to better reflect the intention not to modify the scope of the provisions in the Trade Facilitation Agreement with regard to aircraft in transit.

18. With regard to the section on freedom of transit and its exceptions and regulations, some of the existing language had been rearranged to first state the general principle and then prescribe the requirements for the regulation on traffic in transit. It was merely a reshuffling of existing texts. In the definition of freedom of transit, the explicit inclusion of the free choice of means of transport contained in TN/TF/W/133/Rev.1 had been deleted. The text had been reworded in the sense of the original GATT Article V language. That had been done because some Members needed assurance that their transport policies, which were based on favouring some means of transport over others, in particular through market mechanisms, could remain in place. Examples of such policies included preference to certain means of transport for ecological reasons, such as by subjecting more polluting means of transport to higher charges than less polluting ones. Members wanted to make sure that such measures could remain in place.

19. On regulations, there was a new paragraph 6. It was actually not new but simply contained wording from GATT Article V, paragraph 4, and had been included to make sure that no text of the current Article was lost. It contained language regarding the reasonableness of regulations imposed on traffic in transit.

20. The old provision, which started to list the possible exceptions, had been deleted because it did not seem a good way to start with an explicit and closed list of all the measures one could take as that would exclude other measures which might be as appropriate for the policy objectives pursued, but which were not included in the list. The proposal tried to work with the general disciplines without making a long list of all the possible measures that were permitted.

21. There was a strong link with the next paragraph on national treatment because national treatment would give some flexibility. It would ensure that any regulations imposed on freedom of transit for valid policy objectives were restrained as they would also affect domestic traffic.

22. A major change had been made in the paragraph on national treatment. A reference to domestic goods and their transport had been deleted in the benchmark of national treatment. The benchmark was now just import and export traffic. This had been done because, in some countries, regulations or fees and charges for some local transport were subsidized. There were some regions which were far away from the centres and the sponsors did not want subsidies for the purposes of regional politics to be extended to all traffic everywhere. The fair basis of comparison was import and export traffic for the treatment of transit. This could apply typically on weight limits, operating hours and the like.

23. With this change, there was merit in looking at the exact coverage of national treatment. That was why "laws, regulations and formalities" had been reinserted in brackets as being part of national treatment. The sponsors sought the views of the membership on that matter, having taken out domestic traffic as a basis of comparison. They wanted to know whether Members could live with

laws, regulations and formalities in the definition of national treatment, which was not contained in the existing Article V.

24. On most-favoured-nation treatment, following the remarks made at the February session of the NGTF, there was a new sentence at the end of the text, stating that MFN was applied to "like products being transported on the same route under like conditions", as was already stated in the GATT. This had been done for consistency reasons.

25. On treatment preceding and following transit, it was proposed to extend the protection offered by Article V, paragraph 6 of the GATT to cover treatment not only of imported goods that had been in transit but also of goods destined for export that would be transiting a particular country in the future, as well as to respective means of transport. A practical example where this could become relevant would be a country which was highly dependent on transit traffic from a neighbouring landlocked country. The outgoing traffic could be used as a means of political pressure on those neighbouring countries from the landlocked country. There was merit in looking into extending the protection already contained in the GATT for treatment following transit to treatment preceding transit.

26. On fees and charges, some minor changes had been made to ensure that the text was more consistent with the wording of the current GATT Article V. A clarification had been introduced with regard to transportation fees and charges, stating that they intended to also cover "tolls, road charges and similar". The reasonableness was determined, *inter alia*, with regard to the conditions of the traffic, using language from paragraph 4 of the existing GATT Article V. The intention had been to increase consistency. The text had also been restructured to clarify the disciplines on fees and charges. The obligation to inform other Members on the location of the information had been dropped as it did not seem necessary anymore. The matter would probably be regulated in the TF Agreement's chapter dealing with publication.

27. On transit formalities and documentation requirements (paragraph 14 and subsequent paragraphs), the sponsors had wanted to clarify the wording found in GATT Article V, which, in its third paragraph, prescribed that "except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions". This meant that, if there was a failure to comply with applicable laws, delays could reach completely unnecessary levels. This did not correspond to the original intention of the drafters but to what could be found in the text. The sponsors were therefore wondering if one could not delete the part currently contained in brackets without changing the intention. One could still hold up any truck if there was a problem. The sponsors wanted to make sure that minor breaches of the law, such as a broken rear light on a truck, did not lead to extended hold-ups. That would not seem reasonable.

28. On bonded transit regimes, the text had been thoroughly revised, taking into account the concerns expressed at the NGTF meeting in February 2008. The intention was to ensure that nobody was mandated to introduce a new bonded transit regime. But if a Member introduced a bonded transit regime, those disciplines would apply.

29. With respect to cooperation and coordination amongst authorities, the sponsors had introduced an explicit mention of mutual recognition of authorized traders schemes as a possible area of cooperation. It seemed necessary to have it explicitly in the text as the mutual recognition of authorized traders schemes was particularly important for an efficient transit system at the regional level.

30. A slight change of format had been made regarding the promotion of regional transit agreements or arrangements to clarify the text. A paragraph had been inserted on monitoring as a

recommended area to be covered by such agreements or arrangements. Mutual recognition of authorized traders schemes had been introduced as a recommended area of cooperation.

31. Finally, there were two new paragraphs (paragraphs 21 and 22) which intended to ensure that bilateral and regional transit agreements or arrangements were not discriminatory and did not end up restricting international trade. It was not the intention to promote regional cooperation in transit that lead to more discrimination instead of less. The paragraph on transparency had been moved to the end of the text to reduce clutter. The sponsors expected this paragraph to be covered by the proposals on Article X in the final TF Agreement.

32. The representative of the European Communities presented submission TN/TF/W/149/Rev.1, explaining that it provided an update of EC technical assistance and capacity building programmes in the field of Trade Facilitation.

33. The document showed the most recent state-of-play of the EC's very varied and comprehensive development aid programmes in the field of Trade Facilitation. It was a snapshot of existing projects and projects in the pipeline over the next two to three years. There were different development aid instruments. The EC had considered it useful to submit this information at this point in the negotiations, primarily to demonstrate its continued commitment to providing support on a long-term and sustainable basis, as called for in Annex E of the Hong Kong Ministerial Declaration.

34. The TF negotiations themselves had given a lot of momentum and provided a great deal of political impulse to the provision of development aid and assistance on Trade Facilitation. Without the negotiations in the WTO, there would not be so much attention in terms of providing assistance in this area. Thankfully, the Geneva process gave the EC and its development partners a very good additional set of reasons for giving priority to this area of development aid.

35. The EC had not only considered it useful to give an update of what it was doing in this area in order to demonstrate that this was very important to the Communities and its partners but also to dispel any worries that, in the light of the financial crisis and the global economic downturn, there might be any reduction or slowing down of development aid flows. That was not the case. EC assistance in this area continued to increase in line with the demands of the Communities' development partners.

36. The document showed that EC programmes covered all regions of the world. They had a fairly global reach when it came to development aid and assistance. The focus was, apart from a focus on the immediate geographic neighbours, very much on the poor developing countries and LDCs. The decisions on aid allocations were based on need and on poverty reduction. Therefore, the aid tended to go where the greatest need was, namely to the LDCs, sub-Saharan Africa and a number of other particularly vulnerable economies and countries.

37. One of the recurrent themes in the TF negotiations had been the concern by some smaller developing countries that they would miss out on the provision of aid, that there would be some kind of funding gap and that the aid would flow to WTO Members who were more commercially interesting from the point of view of the donor countries. He could underline that this was certainly not true in the case of the EC aid philosophy. The aid went to those countries who demonstrated the greatest need. When developing further the chapter of the TF Agreement on technical assistance and the role of the TF Committee and of Members, language should be envisaged to ensure that, in providing assistance, a Member should attach priority to supporting the needs of the LDCs and of the poorest countries.

38. In the area of Trade Facilitation, the principle was that assistance was demand-driven. If a partner country did not request technical assistance in TF, the Communities were not going to force it upon a country. It was always up to the EC's development partners to request support in this area.

39. A concern had been raised that, by asking for support in the TF area, that would lead to reducing aid in another area such as health or education. This was equally unfounded. The EC had increased the overall budget for development aid by 32 per cent in their current aid programmes in order to ensure that new demands and new needs could be fulfilled. It did not involve a transfer of assistance from other equally important areas.

40. The document provided a picture of three categories of TA. The first consisted of programmes delivered by the EC and some subcontractors. The most important one was the European Development Fund for the ACP countries, but there were many others. The paper listed the ongoing and forthcoming projects provided at the Community level.

41. The second category related to similar programmes of individual EC member States. One of the notable developments over the last three or four years had been the very rapid expansion of activities in TF-related aid departments and agencies in response to the increasing importance given to this area. This was equally a result of the WTO negotiations.

42. The third category contained important examples of relevant infrastructure projects which were relevant to the TF agenda. There had been some hesitations about doing this because the EC had not wanted to give the impression that hard-core infrastructure projects such as ports or roads were in themselves part of the TF negotiations and part of the mandate to the NGTF. Infrastructure was not part of the negotiating mandate, but the EC would be the first to recognize that infrastructural support was absolutely vital. It was of less value to have a very simplified, modern customs system, if the basic infrastructure was lacking to allow goods to move across countries and across borders. The EC recognized that, in tandem with assistance to customs reform and modernization, an important effort had to be continued in terms of infrastructural aid. That way, one could maximize the benefits of simplification of import and export procedures. The EC had considered it helpful and balanced to give its colleagues some information on some of the infrastructure projects which the EC was carrying out, in view of their practical importance.

43. The representative of Cuba made a statement for the record. With respect to proposal TN/TF/W/136/Rev.1 from Canada and Switzerland, it had to be noted that the use of sureties and financial guarantees for the delivery of the goods awaiting the conclusion of the definitive clearance was not applicable in Cuba. For this reason, Cuba could not accept the proposal as it was set out in the present text. However, Cuba applied advanced control techniques such as pre-arrival clearance, post-clearance audit and advanced risk management techniques. It was also possible for the admission of 10 per cent of the goods to be formalized prior to their arrival in the country and the importer could use facilities such as incomplete or provisional declaration of the goods.

44. Cuba equally applied procedures for the rapid release of shipments. There also existed arrangements with certain entities for the admission of the goods in the name of the customs authority at the own warehouses of the importer/exporter, due to the reliability of the compliance with his obligations. Cuba would value an alternative text that accommodated its position.

45. Cuba had a drafting suggestion regarding proposal TN/TF/W/133/Rev.2. At the end of the sentence dealing with general and security exceptions, one should add "in a justified manner without constituting a disguised restriction to international trade".

46. With respect to TN/TF/W/123/Rev.2 from India, Cuba had serious difficulties to accept the proposal in its current form for various reasons. It would imply a huge economical and work-related

burden for countries in development in terms of assigning personnel and time to attend to any request. It would have commercial implications to provide information on contracts, goods and their value, ports, etc. Since it was known that some developed countries applied coercive, unilateral measures of an extraterritorial character against countries in development in a totally discriminatory manner and contrary to free trade and to all Agreements of the WTO, which also included the persecution of all commercial and financial operations that those countries, including Cuba, undertook, Cuba was of the view that this was not the only way to achieve an effective cooperation between customs.

47. 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

48. 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.

49. It was so agreed.

C. OTHER BUSINESS

50. The Chairman addressed the issue of the Group's next meeting, suggesting to hold it in the first week of December. Details on the timing and the agenda would be communicated at a later stage.

51. It was so agreed.

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

53. The meeting was adjourned.
