

Negotiating Group on Trade Facilitation

SUMMARY MINUTES OF THE MEETING

Held in the Centre William Rappard
from 1-3 December 2008

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/3285. As Members would have seen from the airgram, the meeting aimed at advancing the Negotiating Group's work on all elements of the mandate, refining Members' proposals and increasing their general acceptability. In addition, delegations would look into the question of attendance by the Annex D organizations on an ad-hoc basis.
2. The agenda was adopted.
3. The Chairman set out the plans for the organization of the negotiating sessions. Their structure resembled that of the last meeting, reflecting the targeted objectives of advancing the textual work on Members' proposals. At the same time, delegations had less time at their disposal, forcing them to be even more efficient in accomplishing their tasks.
4. Work would commence with the introduction of new proposals. It would be followed by their detailed discussion in the context of a series of informal working sessions. Opportunity would then be given to revisit the previously presented texts, starting with the ones on GATT Article V and continuing with the Article VIII and Article X domains. Technical assistance (TA) and special & differential (S&D) treatment matters would be taken up Wednesday morning. The afternoon of that final day would see the Negotiating Group (NG) address a few additional items – such as work on assessing Trade Facilitation (TF) needs – before concluding in plenary mode.
5. In terms of mode of operation, the NG would continue its tradition of conducting most of the exchanges in open-ended, informal mode. The presentation of new submissions would be considered formal whereas their detailed discussion would remain off the record.
6. As in July, work would benefit from the participation of capital experts from African and LDC states. Their presence had been enabled by the generous funding support from the UK's Department for International Development, for which he wished to express his sincere thanks.
7. The plenary session 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 interventions:

9. The representative of Canada introduced proposal TN/TF/W/136/Rev.2 on the separation of release from the final determination and payment of customs duties, taxes and fees, co-sponsored by Switzerland.

10. Members would recall Canada's intervention at the last meeting when they had said that this was probably one of the most truly "trade facilitating" proposals which had the potential to create significant savings for Members in terms of both time and costs. At that time, it had been announced that the sponsors would take Members' comments on TN/TF/W/136/Rev.1 into consideration and would be proposing a new text shortly.

11. Specifically, Canada had expressed willingness to accept the suggestions to (i) include language making it clear that a Member did not have to require a guarantee to secure clearance, (ii) to explicitly narrow the proposal so that it only covered the financial aspects of release and clearance, i.e. that the proposal only covered duties, taxes and fees which did not have to be determined and paid in order to secure removal of the goods from customs control - all other requirements still had to be met for release to occur; and (iii) to try to reword the proposal to avoid using WCO or other definitions which could be problematic.

12. The first thing that would strike Members when looking at this revision was the change in the title. This had given Canada considerable angst – delegations would notice that they had taken out the word "release" in the text. The sponsors did not want a title that was longer than the proposal itself, and since they understood that titles had no legal consequence and they wanted some linkage back to their earlier proposals, it had been decided to leave "release" in the title for the time being. Co-sponsor Switzerland had suggested to borrow from the pop music world and call it "the proposal formerly known as separation of release from clearance", but, in the end, they had decided against that.

13. Canada would now present the changes in the text and would listen carefully to Members' suggestions for an appropriately descriptive title.

14. Several options had been looked at concerning the language of the text. The sponsors had wanted to eliminate the need for definitions, if they could. Since the word "clearance" could be misconstrued to refer to acquittal of all import-related requirements, they had thought that by focusing the proposal on just payment of duties, taxes and fees, they negated the need to define what they meant by the word "clearance". Consequently, the term had been eliminated from the proposal.

15. The sponsors had then looked at various options to cover what they intended by the term "release". Although it was well established and widely used, Canada had thought that one should try to avoid using terminology that might have broader connotations than the intended or which might conflict with widely used definitions, such as WCO ones. The first inclination, based on a suggestion from a Member, had been to replace "release" with the word "withdrawal". But it had soon be discovered that, in some legal systems, including that of co-sponsor Switzerland, the word "withdrawal" meant something else, namely pulling back the goods intended for importation while they were under process by customs, renouncing therefore to import them and presumably returning them from whence they came. Since that had certainly not been the intention, the sponsors had went on to look for other language. They had finally settled on the language now contained in paragraph 1 of the revised proposal as representing the desired outcome as best as they could. The phrase "remove goods from customs control" was a clear and definitive statement of what was intended without using words like "release" with their attendant definitional issues.

16. In response to calls for clarity on the scope of the proposal and for narrowing it explicitly to cover only the financial obligations of the importer, the sponsors had changed both the title and the language in the first paragraph to cover only "final determination and payment of customs duties, taxes and fees". The inclusion of the words "and payment" contemplated situations where duties,

taxes and fees had been determined but payment was deferred for some reason. This provided precision and avoided confusion which could arise through the use of the broader language "prior to meeting all of the Member's import requirements".

17. Another issue the sponsors had addressed concerned the term "on arrival", which appeared in the first paragraph of the earlier document. Since in many cases pre-arrival processing was already in place or would soon be in place, determination of customs duties, taxes and fees would often take place before arrival of the goods. Members would note at the end of the first paragraph in the revised proposal that the timing element had been expanded to clarify the intended meaning of financial obligations that had not been determined "at or prior to arrival".

18. Finally, the earlier version, in paragraph 2, had stated that "the guarantee shall be limited to an amount *reasonably* calculated to ensure compliance ... ". The sponsors had felt that the word "reasonably" in this context did not add anything to the proposal - they would not expect that WTO Members would ever *unreasonably* calculate an amount owing and that the word "reasonably" could be construed to introduce a degree of flexibility and an opportunity for creative mathematics that was not intended. Consequently, the word "reasonably" was no longer found in the new text.

19. Canada hoped that they had adequately explained their reasoning for making the changes Members had before them in TN/TF/W/136/Rev. 2 and looked forward to their comments either now or in the coming weeks. This proposal was a core element of trade facilitation and Canada thanked Members for their ongoing consideration of it.

20. The representative of Canada presented submission TN/TF/W/128/Rev.2 which was co-sponsored by Norway.

21. Canada wished to thank all Members who had provided comments on the Border Agency Coordination proposal contained in TN/TF/W/128/Rev.1 dated 10 March, 2008. Thanks were also due to the WTO Secretariat for the continuing provision of very useful aide-memoires and worksheets, cataloguing Members' discussions.

22. In consultation with co-sponsor Norway, Canada had taken Members' comments under consideration and had prepared a new draft of the proposal which was now available as TN/TF/W/128/Rev.2.

23. Members would note that paragraph 1 of the revised document (about co-operation and coordination among all export and import-related agencies within a Member) was virtually unchanged from the previous version. The only change that had been made was to insert "their procedures" after the word "coordinate" in order to be consistent throughout the proposal. As Canada had stated in its intervention in October, they thought that since this commitment was directed internally, it was preferable to stick to obligatory language ("shall ensure") rather than using more hortatory language ("shall endeavour to encourage").

24. In paragraph 2, which dealt with co-operation between border agencies across a national border, there had been a discussion in October about strengthening the language. Proposals ranged from maintaining the existing language "A Member shall endeavour to cooperate with bordering Members ... " to "A Member shall, as far as possible, cooperate with bordering Members ...", to "A Member shall cooperate with bordering Members ...". The sponsors had chosen to take the middle ground. While they agreed that the commitment should be as strong as possible, and that this would be the first priority, the sponsors still felt that it was unlikely that they would be able to obtain consensus on obligatory language. Members would note that they had changed the suggested "as far as possible" to the more commonly used expression "to the extent possible" for consistency reasons. They would also note that they had changed the reference to "specific" border crossings to just

"border crossings". It was not intended to apply to every border crossing but would only be applicable to those border crossings where it made sense.

25. Many interventions in October had called for additions to the examples of the kinds of coordination and cooperation that might be contemplated. While an earlier draft had included several examples, it seemed evident at the time that it would be difficult to achieve consensus on a list of such cooperation. As a result, TN/TF/W/128/Rev.1 had been written with only the seemingly benign example of "aligning working days and hours" as an example. It appeared from comments in October that Members now had an appetite for more meat on the bone. Consequently, the revision proposed a new paragraph 2 (b) which made clear that options listed were simply illustrative of the kinds of coordination and cooperation that might be considered by Members relative to paragraph 2 (a). Obviously, conditions and capacity varied greatly from situation to situation – the sponsors simply proposed a good faith commitment to consider them and any other appropriate means of smoothing the flow of goods across the border.

26. Four examples were now provided. The first one had already been there before. It proposed the "alignment of procedures and formalities including working days and hours". To that the sponsors had added suggestions received by Members in October. They consisted of the "development and sharing of common facilities", the "provision of expedited processes for goods in transit such as a single channel" and the "development of procedures for exchange of non-confidential information", qualified by the footnote "Subject to further negotiations on how a Trade Facilitation Agreement will coexist in relationship to GATT Article X". All of them were mere examples of what Members might consider doing.

27. Canada once again wished to thank all delegations for reviewing the proposal and looked forward to further comments.

28. The representative of Norway introduced discussion paper TN/TF/W/157 regarding a Trade Facilitation Committee (TFC) from Guatemala, Honduras, Hong Kong China, Norway, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and Switzerland.

29. Recapitulating the history of previous work on the issue, Members would recall that in July 2006, Chinese Taipei had submitted a proposal for the establishment of Committee on Trade Facilitation. However, little discussion had taken place on the matter after that, probably as a result of the fact that the negotiations had not matured enough and that the focus understandably had been on the substantive issues rather than the institutional ones.

30. The more the NGTF had delved into the issue of how commitments were to be implemented, particularly regarding the discussions on S&D, the clearer it had become that there was a need to discuss the institutional aspects, including questions of oversight, as well. A framework was needed. Members now had many textual proposals which referred to the functioning of a TFC as a forum for notifications, consultation and review. This fell under the S&D chapter that would be discussed later in the week. One could see the functions that the TFC would have to cover.

31. Before the summer break, Canada had brought up cross-cutting and institutional issues for a possible Agreement on TF (TFA). Some Members had taken the opportunity to look at what a text on a possible TF Committee might include, based on like texts regarding Committees dealing with other WTO Agreements. In this context, Norway wished to thank the Secretary of the NGTF for an informal compilation of the information on which the current discussion paper had been based.

32. The paper TN/TF/W/157 was divided into two parts. The first, and longest one, discussed what had been included in the textual proposal forming the second part of the document. The

discussion section was divided into two parts as well, looking at both what had been included in the proposal and at areas that had not been included, but might be added at a later stage.

33. Generally, the option had been taken that Committee articles should be institutional articles, not substantive ones. In doing so, the new proposal did not deviate much from the former proposal by Chinese Taipei. It was the most common way of doing things.

34. In the introduction section of the paper, paragraph 4 set out the general functions of the Committee. Paragraph 5 outlined in more detail what had to be set up in the substantive articles, referring to S&D discussions on timelines, phasing in of commitments and the like.

35. The entire paper was hoped to be self-explanatory. With respect to the textual proposal as such, paragraph 1 dealt with the establishment of the Committee, followed by provisions on its composition and election in paragraph 2 and on frequency of meetings in paragraph 3, which pointed to one of the functions of the TFC relating to consultations "on any matters". Those matters would have to be defined in substance in other parts of the TF Agreement. Paragraph 4 stated that "the Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members", again pointing to the substantive part of the TFA. Paragraph 5 dealt with subsidiary bodies that the Committee might set up.

36. Paragraphs 1-5 should not be unknown to anyone. They had more or less been contained in the earlier proposal by Chinese Taipei. The relatively new elements were set out in paragraph 6, referring to other international organizations in the field of trade facilitation. That was very natural for this Agreement. The negotiating mandate had already established a close relation to the five Annex D organizations by explicitly referring to them.

37. Paragraph 7 set out provisions for reviewing the operation and implementation of the TFA. That could be dealt with elsewhere, but had been included here for the time being. Omitted from the earlier proposal by Chinese Taipei was a reference to the WTO Secretariat. Assuming that the WTO Secretariat serviced the TFC, it had not been considered necessary to put that into the text on the TFC as such. However, some of the other substantive proposals had mentioned a special role for the WTO Secretariat. One would have to look at specific wording for that aspect when coming to that point.

38. In summing up, it should be said that it was necessary to look at a TFC and its functions at this juncture in the negotiations. It was a long paper and a short proposal. The discussion part was presented to Members in order for everybody to see the reasoning behind the proposal, the linkages to other areas and the possibilities for changes, depending on where Members decided to go with the other parts of the negotiations.

39. The representative of the European Communities introduced JOB(08)/120. As mentioned by the Chair, it was work in progress, reflecting comments Members had made on an earlier version of the proposal in previous NGTF meetings.

40. He wished to take delegations through the changes and explain the underlying reasons. In the first paragraph, the change was basically a reaction to delegations' comments. The EC had tried to harmonize paragraph 1 with paragraphs 3 and 4 where the terms "additional facilitation measures" were used. For that reason, paragraph 1's reference to "simplified import and export formalities" had been replaced by the words "make available additional facilitation measures".

41. Substantial changes had been made to paragraph 2, reacting to comments received. The 3 specific criteria most frequently found in authorized trader/trusted operator schemes had been listed down as specific mandatory criteria for obtaining authorized traders status. This was not a closed list, but those 3 criteria should definitively figure under such a list. A fourth criterion contained in an

earlier version of the proposal had been deleted as a result of a comment by a Member. The EC agreed that security and safety standards did not belong as intrinsically to the core of authorized trader criteria as the other ones.

42. The proposal first set out a definition of the authorized trader status in paragraph 2, followed by a list of the measures a Member had to provide to these authorized traders in paragraph 3. The four items on the list formed the essence of authorized trader/trusted operator schemes.

43. The first was the right to make simplified declarations, followed by reduced physical inspections. Requests had been made to define "exceptional circumstances", but the EC continued to believe that such a definition should be left to each Member. With respect to the third item contained in paragraph 3 (iii), the language had been modified to include the most common reduced documentary and data requirements as an example. This was why the text now referred to "*including* the right to submit for processing a single document". Changes to the fourth element were a reaction to some Members' request to make it more specific. What was meant was not a reduction of release time below three hours, as contained in the expedited shipments proposal, but a more rapid release time "in comparison with the standard or average release times for non-authorized traders".

44. The logic of the proposal was to first have a definition of authorized traders followed by the measures Members must provide to them and, finally, a list of additional facilitation measures that could be provided. One of those additional facilitation measures was local clearance, defined as clearance on the importer's premises. Another one consisted of remote filing which could be done from anywhere in the world, mainly by electronic means. Two other optional measures had been included, which spoke for themselves: deferred payment and reduced guarantees.

45. Paragraph 5 should be read with paragraph 2 which outlined the criteria for obtaining authorized trader status. Paragraph 5 simply said that those rules could not create any kind of arbitrary or unjustifiable discrimination. A sentence had been added which required those rules to be transparent.

46. Paragraph 6 was in square brackets because the EC agreed with the comments made in the previous NGTF meeting that this could be part of the risk assessment proposal. Depending on the direction in which risk assessment developed, this paragraph could be dropped.

47. In paragraph 7, some Members had requested to drop the reference to international standards or to make it more lax. The EC believed that there already was an in-built flexibility in the wording and had therefore opted to maintain the text in its current form.

48. The representative of Tanzania, on behalf of the LDC Group, introduced JOB(08)/123, explaining that it did not contain any new ideas apart from what he had verbally mentioned during the NGTF meeting of 18 July. Those comments had been repeated during the last NGTF session in October, and it had been promised to circulate them in writing. This had led to the current document.

49. The main elements were the following: There was an agreement that Job(08)/44/Rev.1, from Argentina represented work in progress. On the issue of schedules, the LDCs were of the view that a needs assessment should not represent a pre-condition for implementing commitments, but a valuable step towards that goal. However, they could agree that measures identified under category A, which normally emerged clearly when conducting a needs assessment, could be scheduled during signature.

50. Regarding the categories of commitments, the LDCs were of the view that flexibility should be given to Members to decide whether they wanted two or three categories.

51. With respect to the implementation capacity building plans, the LDCs believed that there should be flexibilities in their implementation plans, hence the importance of having early warning mechanisms. LDC Members should notify implementation plans regarding commitments for which they had already secured donors. They hoped that donors would be very forthcoming in indicating on which commitments they were ready to provide TA.

52. The implementation plans should be simple and in standard form. Measures for whose implementation LDCs had not been able to find donors would not have to be notified and no time frames had to be identified. But the LDCs might reconsider the issue of identifying time frames because such time frames might also be beneficial to them. It was perhaps a way of putting pressure on the donor community to provide TA&CB to developing countries and LDCs.

53. Unfortunately, the special paragraph on LDCs proposed by the LDC Group was missing in the communication from Argentina, and was also not contained in the present document. This language was very dear to the LDCs and it was their bottom line. They therefore requested the Secretariat to include the following sentence in a revised version of job document (08)/123: "LDCs shall not be required to undertake mandatory commitments until their acquisition of the necessary capacity to implement such provisions". That was very important to LDCs. They were open to discussing the question of assessing the capacity acquisition for LDCs.

54. Finally, the LDCs wished to thank Argentina for the important role it had played in the NG's work on S&D. Another coordinator would be necessary in the not too distant future to enable Members to reach a balanced outcome beneficial to all.

55. The representative of Paraguay wished to make a statement for the record in his capacity as coordinator of the work of the Group of Landlocked Developing Countries (LLDCs) on issues of trade and development.

56. The LLDCs placed high hopes on the work of the NGTF. There were 31 landlocked developing countries of which 8 were still in the process of accession to the WTO. It was of great importance that when they acceded to the WTO, they would find it to offer rules that facilitate transit. At the last meeting of the Group, he had been asked to deliver a statement relating to the ongoing negotiations on GATT Article V.

57. Ten per cent of the total population of the developing world lived in landlocked countries. This represented approximately 350 million people. Between 1990 and 2001, 40 per cent of this population was living on less than 1 dollar a day.

58. One reason for this enduring poverty was that LLDCs struggled to get integrated in the world economy. Trade of LLDCs had been highly underperforming, with trade flows reaching only one quarter of those of other developing countries that were not landlocked.

59. Research in the 1990s had shown that being landlocked raised the transport costs of a country's foreign trade by around 50 per cent. In some cases, the increase reached up to 72 per cent, reducing a country's trade volume by 30-60 per cent and cutting annual economic growth by 1 to 1.5 percentage points.

60. Research in the 1990s had also shown that improving a country's infrastructure and that of transit countries from the 25th percentile to the 75th percentile overcame more than half of the disadvantage of being landlocked. Poor infrastructure was only part of the picture. New research showed that other problems were just as costly, if not more so, like unpredictable transit times, anti-competitive regulations and transit overheads. Unpredictable transit times added costs since each extra

day added expenses amounting to nearly one per cent of the shipment's value, about ten times the costs of capital tied up in goods moving.

61. These figures showed that many LLDCs had not been able to compete efficiently in the international trade market, mostly as a consequence of the high cost of transport. As trade liberalisation continued, the effective rate of protection provided by transport costs was now considerably higher than that provided by tariffs in the case of LLDCs.

62. Against this background Members would easily understand why he wished to stress the importance LLDCs attached to the on-going negotiations on GATT Article V in the context of the trade facilitation negotiations. LLDCs viewed these negotiations as a precious opportunity to clarify and improve the rules on transit of GATT Article V. Such work could not only be an important contribution to LLDCs' efforts to overcome their geographical disadvantage, but would be of interest to all Members touched by transit and interested in maintaining and strengthening a rules-based, global trading system.

63. It was not his intention to address any particular proposal or paragraph. Rather, he wished to underline once again the importance Landlocked Developing Countries attached to the negotiations on clarifying and improving GATT Article V and to encourage all Members to engage actively in these negotiations.

64. The Negotiating Group took note of the statements made

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

66. The representative of Tanzania, speaking on behalf of the LDC Group, wished to make a statement for the record. The LDCs wanted to register their appreciation and to express their thanks for the financing of the participation of capital-based officials from LDCs and the African Group. It was crucial for them to take part in the technical discussions on proposals that the Geneva representatives were not always able to fully comprehend.

67. The fund for such participation, to which donors had been generously contributing, was in line with the spirit envisaged in Annex D of the July package. The LDC Group hoped for that assistance to continue for the next meeting of the NGTF.

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

68. 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.

69. It was so agreed.

C. OTHER BUSINESS

70. The Chairman addressed the issue of the Group's next meeting. Given the current state of affairs, this was a somewhat challenging undertaking, considering the developments that the coming days might - or might not - bring. Not knowing what the next steps would be, the NG had to remain flexible in its planning. This was why he proposed to postpone the determination of a concrete date

until Members had more clarity on the road ahead and the related time-frames. He would get back to delegations with a suggested date at the earliest possible moment.

71. It was so agreed.
 72. The Negotiating Group took note of the statements made.
 73. The meeting was adjourned.
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