

Negotiating Group on Trade Facilitation

SUMMARY MINUTES OF THE MEETING

Held in the Centre William Rappard
from 23-27 February 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/3312. As Members would have seen from the airgram, the meeting aimed at advancing the Negotiating Group's work on all elements of the mandate, starting with the relevant GATT Articles and then moving to the areas of technical assistance and S&D.
2. In addition, delegations would take up the standing item of ad hoc attendance by the Annex D organizations.
3. The agenda was adopted.
4. The Chairman outlined the organization of work over the course of the week. The overall structure of the meeting resembled that of the last sessions. It reflected the targeted objectives, seeking to advance work on all proposals under consideration. The 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. Substantive work would start 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 the informal working sessions, which were scheduled to commence right after the end of the opening plenary. GATT Article X-related proposals would be addressed first. From there, the Group would move on to the Article VIII- and Article V areas, as time permitted. Technical assistance and S&D matters would be the focus of work on Thursday before then looking at the needs assessment area the day after, and finally closing in plenary mode.
5. Work on S&D would commence under his chairmanship and then be followed by a complementary, Member-driven process. Delegations would recall that, at the last meeting, they had requested him to identify a suitable candidate for the position of a Member-facilitator to support the work on implementation. In response to that demand, he had engaged in a series of exchanges with all interested parties, as announced in his fax of 14 January. What had emerged from those consultations was a clear wish from Members to entrust Matthew Wilson from Barbados with the role of a friend of the Chair. And since he kindly agreed to assume this responsibility, he was in a position to announce that Mr. Wilson would be executing such a function starting as of this week. The idea was for him to assist the Chair with his work on the crucial areas of technical assistance and S&D. Mr. Wilson would carry out the initiatives in his personal capacity as a complementary element to the activities in the NG They would take place within the framework of the NGTF sessions under the Chair's overall responsibility. Regular reports would be made to the plenary on progress made and yet to be achieved. He was confident that Mr. Wilson would be of great help in determining existing points of convergence and in identifying additional common ground.

6. The representative of Barbados thanked the Chair and all delegations for the confidence they had placed in him to contribute to the collective aim of developing the pillar of S&DT in the TF negotiations. Getting an S&DT package which attained the right balance of predictability, flexibility and realism was a challenge which he knew Members could rise to if they listened to each others' valid concerns, focussed on their priorities and harvested and recorded either areas of consensus or areas where they could narrow the options for a consensus.

7. In the past year, Members had made a great deal of progress although they still had some way to go before they could craft the requisite legal text. This progress was as a result of the formal work they had undertaken in the negotiations under the Chairmanship of Ambassador Sperisen, the informal work and contacts between delegations and the important initiatives assumed by Eduardo Tempone from Argentina. It was important, however, that they once again recognized the work Argentina had done and that, as they moved forward, they based their discussions on the first revision of Job document (08)/44, amongst other documents.

8. He had had a number of meetings with the Chair and with the Secretariat prior to the current plenary session to discuss the role of the "Friend of the Chair". He had also had many informal contributions from delegations about what they would expect from the friend of the Chair. It was clear that his role was to assist the Chair to arrive at a favourable outcome on the S&DT pillar and to engender and promote a series of discussions in an open-ended and transparent context where every delegation could feel an ownership of any outcome and where it was clear to all what progress had been made and what progress remained to be made. To that end, the discussions on Thursday would be structured along a series of questions based on a step-by-step approach to the S&DT negotiations. The questions were an attempt to focus the debate and to elicit clear and unambiguous responses and positions from all delegations. The outcome of these discussions would be reported to the Friday plenary and, without prejudice to the nature of the debate, a written report under his own responsibility would be prepared which would seek to document those areas where he believed a possible agreement had been reached or where there was a narrowing of the options available to lead to a possible agreement.

9. The questions were simple and focused and covered the areas of needs assessments, submission of information at signature, categories of commitments, and implementation plans. He was confident that delegations would engage constructively and that they would be able to record progress after Thursday. These questions would be circulated by the Secretariat shortly. If delegations wished an electronic version of the questions they could email him at mwilson@foreign.gov.bb. In addition, he would be available in the afternoon from 3 p.m. onwards to meet any delegation or country groupings that wished to share their ideas of how they would like to see the S&DT discussions unfold. Any delegation wishing to meet him could contact him either after the morning session or later via email to arrange a time. He looked forward to fruitful discussions on Thursday and remained confident that Members would have a resolution that addressed all of their valid concerns and perspectives.

10. The plenary session was adjourned and the informal working sessions commenced.

A. NEW AND REVISED PROPOSALS

11. This part of the meeting was conducted in informal mode with the exception of the following presentations of new/revised proposals:

12. The representative of Japan introduced proposal TN/TF/W/117/Rev.1 on the issue of pre-arrival processing on behalf of Japan, Hong Kong China, Korea, Mongolia and Switzerland. The submission revised an earlier proposal on the matter, reflecting the comments made by other Members in past NGTF meetings.

13. The revision contained three main changes of the previous version. The first related to the preamble and to paragraph 4. The descriptions concerning national treatment, most-favoured nation treatment, general and security exceptions, S&D and TACB had been updated and made comprehensive in order to reflect the horizontal discussion that had taken place on those items. As a result, paragraph 4, which addressed S&D, had been deleted as the matter was discussed horizontally as a cross-cutting issue.

14. The second change could be found in the second sentence of paragraph 1. The word "cleared" had been changed to "released". Some Members had commented that the goods would not be cleared unless duties and taxes were paid or sufficient guarantees were posted. In order to reflect that comment, the word "cleared" had been replaced by "released", with the condition set out in the last part of the sentence which read "provided that duties and taxes are paid or provided that a guarantee sufficient to ensure such payment is posted".

15. In accordance with the addition of the conditionality for immediate release, the term "should" had been replaced by "shall". Furthermore, since the sponsors considered that physical inspection and any other submission by traders prior to the arrival of goods, other than examination, might be needed before the authorities released goods upon arrival, a necessary modification had been made in that sentence.

16. The third change concerned the use of international standards and practices as described in paragraph 2. The sponsors had received comments from Members that more flexibility was needed. In order to reflect these comments, the term "where applicable" had been added in paragraph 2. As a result of this addition, the sentence would be weakened. Therefore, paragraph 2(a) had been inserted for Members to recognize the importance of using international standards and practices.

17. The representative of Hong Kong, China introduced proposal TN/TF/W/155/Rev.1 on behalf of his delegation and the co-sponsors Japan, Mongolia, Norway, Switzerland and Turkey, highlighting the major changes that had been made to the first version of the submission.

18. As colleagues might recall, TN/TF/W/155 was a proposal seeking to replace two related proposals on the subject of publication and availability of information. At the workshop held by the co-sponsors at the NGTF meetings where the proposal had been discussed, Members had provided many useful comments and suggestions. Taking those comments on board, the co-sponsors had recently revised the submission and circulated it to Members. While they appreciated that colleagues might need more time to consult their capitals as the submission had only been tabled a little while ago, they would like to highlight the major changes they had made and would like to receive Members' further feedback. He therefore wished to explain the amendments that had been made by going through the different paragraphs of the proposal.

19. First, on paragraph 1, Members had previously raised the question of the inter-relationship between the list in paragraph 1 and the existing requirements under Article X. Concerns had been expressed as to whether they sought to replace the existing requirements in Article X. The intention of the co-sponsors was to clarify and improve the existing Article X provisions, which remained fully valid and applicable. In order to spell out this intention more clearly, the sponsors had added the relevant Article X provision in the chapeau of the proposal. They had also added the phrase "including but not limited to" towards the end of the chapeau, which they hoped to provide greater clarity on the relationship between the list under paragraph 1 and the existing Article X requirements.

20. On paragraph 1(a), in response to the comments that the term "procedure" used in the original version of the proposal was not specific enough, the sponsors had elaborated it to specify that it would cover only procedures relating to importation, exportation or transit that were required by the

Government. In other words, procedures that were not required by the Government would not need to be published.

21. On paragraph 1(c), there had been comments that the original wording of "decisions and examples of customs classifications" was unclear. Doubts had been expressed as to whether it was meant to cover judicial decisions or decisions made by customs authorities. To address this concern, the sponsors had replaced the paragraph by "General rule for classification of products for customs purposes as well as examples of such classifications". The intention was to ask Members to inform traders of the type of systems they were using in classifying products for customs purposes. Members should also provide some examples of the classification of products under their systems. The sponsors had also amended paragraph 1(e) so that Members would only need to publish those fees and charges of procedures that were required by the Government.

22. As for paragraph 1(h), the sponsors had specified that Members would only be required to publish agreements or parts thereof they had entered into with any country or countries relating to the importation, exportation or transit. This was hoped to provide greater comfort to Members.

23. On paragraph 2, there had been comments that the sponsors should further elaborate the word "convenient manner". They had done so by adding the phrase "in order to enable interested parties to become acquainted with them".

24. Paragraph 3 had been revised with a view to providing greater clarity on the linkage between the requirement to publish materials on the website as opposed to the general publication requirement under paragraph 1. Under the revised paragraph 3 (a), Members would have to publish on the Internet a description of the procedures required by the Government in connection with importation, exportation or transit, which should include several key materials as specified in paragraph 1, including the appeal procedures, import, export or transit requirements, restrictions or prohibitions etc. Under paragraph 3(b), Members should also publish on the website the forms a trader would need to fill in and the documents traders might have to provide to the authorities.

25. The sponsors had also changed the word "outline of procedures" to "description of procedures" in paragraph 3 (a) as suggested by some Members. The original heading of "establishment of an official website" had also been changed to "availability of official website" as some Members might already have established official websites for the publication of information. By the same token, they had also changed the heading of enquiry points to now refer to the "availability of enquiry points".

26. On paragraph 5, the sponsors had now specified that the enquiry points should only be responsible to answer enquiries on issues covered by paragraph 1. They would not have to handle any enquiries unrelated to issues mentioned in paragraph 1. The word "reasonable" had been added before "enquiries" as suggested by some Members.

27. Likewise, the sponsors had added "reasonable" before "time period" in the same paragraph. Under the revised provision, Members should reply to enquiries within a reasonable timeframe. There had been concerns that more time might be needed for more complicated cases. However, the sponsors believed that in such cases, Members could satisfy the relevant requirements by providing an interim reply after a reasonable period of time. They did not consider it necessary to prescribe and define the term "reasonable" and believed that it should be left to the discretion of each Member.

28. As regards paragraph 8, the sponsors had added the words "judicial" and "administrative" before "decisions" and "rulings", respectively, to clarify their meaning, as suggested by Members. They hoped that the revisions of the proposal would help to address Members' concerns. Feedback would be much appreciated.

29. On a more general note, there was a need to ensure consistency and to deal with the issue of overlapping proposals. The current revision sought to consolidate different, related proposals on publication under Article X. There were a number of other proposals under GATT Articles X and VIII which contained provisions on a publication requirement. They included the proposals on advance rulings, fees and charges and appeal procedures. The co-sponsors of the present proposal would continue to work with the proponents of these other proposals to explore the feasibility of further consolidation. They hoped that the consolidation work done on this front could help reduce unnecessary overlaps between related proposals and could create more synergy.

30. The representative of Honduras introduced proposal TN/TF/W/158 on the establishment of a national committee on Trade Facilitation, co-sponsored by Honduras, Norway and Switzerland.

31. As indicated in the document, the reports submitted by the different groups set up in capitals in the context of the execution of a self assessment activity had indicated that Members paid a lot of importance to the national committees that were formed as a basis to carry out the assessment work.

32. It was important to signal in a guide on the self-assessments that an effective coordination mechanism was crucial to ensure the proper development and execution of the different stages of the activity which had the objective of identifying the situation in relation to the different measures currently under discussion in the Negotiating Group. As everybody knew, Trade Facilitation measures implied the need to coordinate amongst the different governmental agencies and to ensure the participation of the private sector in order to arrive at a better implementation and application of the Trade Facilitation measures.

33. It was also important that a future Agreement on Trade Facilitation contained provisions which enabled Members to deal effectively with possible implementation difficulties that could arise with respect to the commitments undertaken. The proposed coordination mechanism would enable Members to find solutions to the problems by means of consultation. It would be an inter-institutional forum to promote Trade Facilitation.

34. The proposal was simple. There would be an obligation to set up a committee or a similar coordination mechanism to assist with the implementation of the TF Agreement. The proposal did not tell Members how to do that. It simply tried to identify how the committee would like. It was up to each Member to decide which form and mode worked best for them. The overall objective was to ensure a better implementation of the measures undertaken.

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

36. Upon resumption of the plenary meeting, the discussions continued in informal mode with the exception of the following statements, which were requested to be placed on record:

37. The representative of Cuba wished to thank Mr. Wilson for his work and his report on S&DT. Cuba understood that this document, while prepared under the friend of the Chair's own responsibility, would serve as a basis for future discussions. Consequently, Cuba would be grateful if the report included the documents circulated by Argentina, as well as the proposals circulated by Members which referred to S&D. This would give a more objective and complete picture of the issue and would help in the final analysis in order to find the proper path to follow.

38. Cuba was also grateful for the Chair's report. With respect to his comments regarding Members' excellent participation, his remark that there had even been discussions on issues which had previously received little attention and that there had been greater momentum in the work on S&DT, Cuba did not wish to contradict that assessment, but also wanted to stress that there was still a lot of work which remained to be done. There was no question that there had been a real discussion, but

there had also been some delegations who had complained that their concerns had not been covered. In that context, Cuba wished to warn that this was a process in which all comments, suggestions and proposals must be duly covered in order for Members to make proper progress.

39. Consequently, Cuba was grateful for the worksheets circulated on 19 February where Members could see the comments made by various delegations. Cuba drew attention to this because they saw that proposals had continued to appear, which contained comments, including major objections on the part of some delegations, without these comments having been covered in the revised proposals. As a result, Cuba encouraged the proponents to take these comments and suggestions into consideration.

40. Cuba also wished to underline that, despite the fact that there had been a long and extensive discussion on S&DT, as far as Cuba was concerned, it was quite remarkable that there was a difference between the direction of the revised proposals and what was available in terms of S&D material, which had not yet been made concrete. Members were still talking about proposed legal texts. Cuba encouraged for those themes to be treated in parallel so that developing countries could take on the necessary commitments. Cuba and many other developing countries had major reservations to take on commitments without concrete and satisfactory answers to the questions which were essential to meet the developing needs of their countries.

41. The representative of Bangladesh thanked the Chair for his factual report. It had indeed been a very fruitful negotiating week under his leadership. However, Bangladesh wished to make a few points.

42. The first related to the relationship between GATT Articles V, VIII and X and a Trade Facilitation Agreement. Since Annex D mandated Members to clarify and improve relevant aspects of GATT Articles V, VIII and X, they could not support an amendment of GATT. As clarification and improvement did not imply an amendment or replacement, Members could build on the existing GATT Articles that were already under implementation. That way, Members could preserve the integrity of the three GATT Articles.

43. The second point related to that fact that there were many references to international standards such as the Revised Kyoto Convention in the proposed texts. Bangladesh had tried to make clear on a number of occasions that, like many other WTO Members, it had not yet ratified the Revised Kyoto Convention. As a result, they could not agree to a binding language in the textual proposals. In addition, there should be uniformity of language where the citations of international standards were made across the proposals.

44. The third point concerned the pillars of TA/CB and S&DT. Bangladesh thanked Members for appointing Mr. Matthew Wilson of Barbados as a Friend of the Chair. Mr. Wilson had already done an excellent job as a faithful Friend of the Chair and Bangladesh remained duly bound to cooperate with him in his future endeavours.

45. Regarding the needs assessment, Bangladesh maintained that it was an integral part of the negotiations as far as Annex D was concerned, but it could not be a precondition for implementing commitments. It could be regarded as a valuable stage towards implementing commitments. In addition, a needs assessment was an ongoing process. In some LDCs, including Bangladesh, it could be regarded as a modest beginning. A comprehensive needs assessment was necessary in the future with possible donor assistance to examine further whether the proposed measures were consistent with Bangladesh's peculiar trade, development, financial needs or their administrative and institutional capabilities.

46. On the other hand, Bangladesh felt that a needs assessment might not enable LDCs, even developing countries, to determine the timeframe and the cost implications of relevant categories of measures.

47. In Annex D, implementation capacities had been placed at the top as a prerequisite to take up any commitment. Paragraph 2 of Annex D stated that "In particular, the extent and timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members". To fill in the capacity constraints, TA/CB had been given vital importance in the Annex D mandate. There was no element of compulsion in taking up any commitment. For LDCs, there was a special provision in the mandate. Paragraph 3 of Annex D said that "Least-developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities."

48. There was no one-size-fits-all formula even among LDCs. In the entire developing world, LDCs were not only poor, but the poorest of the poor. That was why they did not have any reduction commitment in the areas of Agriculture, NAMA or Services. It would therefore not be fair to expect LDCs to make commitments at the time of signing the TF Agreement on what measures were to be contained in categories A, B or C. As the measures were still evolving, Bangladesh needed more time and consultation with its capital to submit a list of commitments after signing the TF Agreement as part of the Single Undertaking. Such S&D was required in addition to the provision of TA/CB.

49. As regards the implementation of capacity building plans, which the Friend of the Chair had not had time to discuss, Bangladesh hoped that Members would find time to look into that in the future. Bangladesh felt that those plans should be as simple as possible and that there should be flexibilities such as an early warning system. In any case, LDC Members would notify implementation plans for which they needed TA/CB and had to get the assurance of donors. Donors were expected to come forward to indicate which commitments they were ready to finance.

50. On the question of who would determine whether the implementation capacity had been obtained, it was solely the LDCs who would make that determination as they best knew where the shoe pinched. That was what LDC Ministers had agreed on in Maseru.

51. Finally, he wished to reiterate Bangladesh's commitment to engage fully in the negotiations. They did not lack the willingness to take up commitments as an LDC, but lacked the capacity that had to be provided through appropriate technical assistance and support for capacity building.

52. The representative of Rwanda, speaking on behalf of the African Group, wished to raise three issues.

53. The first related to the Chair's assessment of the current negotiating week, which the African Group shared. The momentum enjoyed over the course of the previous year had not been lost. Members had even advanced further. The African Group therefore wished to register its deep appreciation of the Chair's leadership and patience, especially as far as the bottom-up approach was concerned, which would result in a collective result of Members' work. There was no doubt that the NGTF advanced more than any other negotiating group.

54. Having said that, the African Group wished to place on record that any outcome of the TF negotiations should be an integral part of the Doha Package. It should not be treated as a stand-alone negotiating exercise and should not be separated from the rest of the Round. It was not possible to enter into a TF Agreement without having finalized the broader Doha work.

55. Regarding the report by the Friend of the Chair, the African Group was very proud of his performance and stood ready to support and facilitate his work. The African Group shared his assessment that consensus had emerged on some areas and that, while differences remained, the entire membership had worked very constructively. This attitude was hoped to prevail in the near future. It was also hoped that further informal work would be carried out between various groupings so that some kind of consensus could be reached on outstanding issues.

56. On the provision of technical assistance, which had not yet been addressed in the process led by the Friend of the Chair, the African Group wished to see this taken up properly because it was a collective engagement. They committed themselves to implementing the overall package. There was a need for developed countries to commit clearly to providing technical assistance, as reflected in Annex D.

57. The African Group expected that any legal text resulting from the discussions would capture that commitment in a wording that would state that developed-country Members shall provide technical assistance in response to a related request and that developed-country Members shall report on their technical assistance delivery. That was a must. It was a collective engagement. The African Group wished to compare this Agreement to the TRIPs Agreement which contained an obligation for developed countries to provide incentives for their companies to transfer technology to LDCs. It was a legal obligation in the TRIPs Agreement and he could assure developed Members that there was no harm in that because every year, there were reports of over 200 pages, but they were empty. There was no harm to commit to this obligation. The provision was crafted in a way that did not require developed countries to provide such support to all developing countries. They were allowed to pick and chose and just had to report that they provided assistance to country A without any obligation to give assistance to country B. This issue should be reflected by the Friend of the Chair if he were to circulate questions again. It would certainly have to be discussed.

58. The representative of the World Bank, speaking on behalf of the Annex D organizations, wished to brief negotiators about the work currently being done by the so-called Annex D organizations in support of the negotiation process. As Members knew, the Annex D organizations had devoted a significant amount of time and resources, both individually and collectively, to supporting the trade facilitation negotiations.

59. The principle underpinning all their efforts had been the view that facilitating information sharing between capital-based content matter specialists and Geneva-based negotiators would lead to increased confidence amongst negotiators and a higher level of ambition.

60. The most visible result of their efforts to date had been the national needs assessment process that had been coordinated by the WTO Secretariat. Annex D organizations had developed the self assessment methodology and documentation and had supported the conduct of assessments in nearly 60 countries. They would continue to support the assessments in countries that had not yet taken advantage of the program.

61. Many Members had reported very favourably on the needs assessment process and believed it had been extremely helpful in assisting them to understand exactly where their country was relative to the measures under negotiation. Generally speaking, the assessments had also indicated that capital-based officials supported the overall thrust of the negotiations and believed most, if not all, of the measures under negotiation were likely to lead to positive trade dividends.

62. At the same time, the in-country needs assessment exercise conducted as a part of the program was only a first step and it was hoped that the committees or groups established through the workshops would continue to meet and discuss the measures being negotiated in the WTO. The Annex D organizations acknowledged, however, that some Members had told them they were

likely to need additional assistance to take the needs identified during the assessment phase and turn them into practical action plans to both guide effective implementation and to provide a solid reference point for dialogue with potential donors.

63. As a result, earlier in the week, the Annex D organizations had met to discuss the issue. At that stage, and based on the successful formula employed during the needs assessment program, they were leaning towards combining their efforts to develop and distribute a Guide that could be used by Members to prepare their own national implementation action plans. The process they were suggesting would build on the work already undertaken during the needs assessment program and would rely heavily on the capital-based committees and groups established during the needs assessment process.

64. The proposed Guide would likely suggest a comprehensive and broadly common approach to the preparation of individual action plans. The Annex D organizations would continue to work further on the concept and would be happy to share their thoughts with Members once their ideas had been further developed.

65. While they were anxious to ensure that the action planning process was clearly directed and owned by the Members concerned, the Annex D organizations acknowledged that some Members might need additional assistance to prepare their plans.

66. As was the case with earlier efforts, the Annex D organizations would only take the concept further if Members considered such work to be valuable and likely to contribute to a positive outcome in the negotiations. Like their earlier inputs, they wanted to make sure their support was demand, not supply driven.

67. 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

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. In line with what Members would have seen in his fax of 14 January, he wished to propose for that session to be held during the week of 27 April. Details regarding its content and structure would be communicated to Members in due course.

71. It was so agreed.

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

73. The meeting was adjourned.
