

Negotiating Group on Trade Facilitation

MINUTES OF THE MEETING

Held in the Centre William Rappard
from 31 May – 4 June 2010

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

1. The Chairman recalled that the agenda for the session had been circulated in WTO/AIR/3559. As Members would have noticed from the airgram, the meeting focused on three main areas of work. The first related to the new submissions from the membership. They would be taken up right after the end of the opening plenary. Once this had been done, the Negotiating Group (NG) would move to the GATT Article X issues as set out in the Draft Consolidated Text. This would then be followed by work on special and differential treatment as a third key item on the agenda.
2. Time would also be accorded to Members' bilateral, plurilateral and open-ended activities. The afternoons of the first three days had been reserved to this end. Members wishing to organize such initiatives would be expected to report on their results in Friday's closing plenary. After that, the NG would take up a few technical assistance and needs assessment matters as Members had done in the past.
3. The agenda was adopted.
- A. WORK ON THE DRAFT CONSOLIDATED NEGOTIATING TEXT
4. This part of the meeting was conducted in informal mode with the exception of the following presentations of new submissions:
 5. The representative of China introduced proposal TN/TF/W/134/Rev.1. China wished to thank Members for their comments on the previous version of this proposal (TN/TF/W/134). Beijing also appreciated their patience in waiting for its revision.
 6. The sponsors of the new submission understood that, in some Member countries, an audit for customs purposes was not exclusively conducted by the customs agencies. External auditing firms were sometimes authorized to operate such business. As a result, the sponsors had made a minor change in the title when revising the proposal in order to focus on the audit that was carried out by customs. In China's view, customs audit included post-clearance audit, which had been addressed in the first provision of the revision.
 7. China had also noticed the strong concerns of some Members about the nature of the commitment to use customs audit, relating to the question of whether it was mandatory or not. But customs audit was an important measure to facilitate trade, as everybody recognized. China was of the view that the extent to which a Member applied the measure should depend on their own situation. This was reflected in the first provision of the proposal.

8. However, if a Member had decided to use customs audit, there should be binding rules for its use. Based on this perspective, disciplines had been set up for the conduct of customs audit when revising the text, as reflected in paragraphs 2 and 3. The requirements of being appropriate and transparent were emphasized therein.

9. The conduct of customs audit was a type of enforcement which should be valid. Its significance consisted of the use of the information resulting from it, which might lead to further action. Paragraph 4 addressed the matter.

10. As a useful instrument, customs audit would consolidate the effects of trade facilitation if it was applied in connection with other instruments like authorized traders, risk management and the like. Paragraph 5 addressed that aspect.

11. Previous communications had underlined the types of customs audit, previously referred to as post-clearance audit, namely regular audit and targeted audit. Accepting the counterproposals from some Members, the sponsors had made the text of the revised version less prescriptive by not regulating the ways of conducting customs audit in order to provide flexibility.

12. While there were significant differences between the original and the revised text, and the respective titles, the revision was based on the valuable comments and counterproposals from the plenary and the sponsors' careful reconsideration of how customs audit contributed to the purpose of trade facilitation. It was proposed that the new revision substituted the earlier version of the text. China was open to any comments and suggestions with respect to the proposal.

13. The representative of Korea co-introduced document TN/TF/W/134/Rev.1, explaining that his delegation had been deliberating on how to finalize the proposal on customs audit in cooperation with China for four years, since 2006. Indonesia had also contributed to enhancing the quality of the proposal as a co-sponsoring Member.

14. Korea welcomed the revised text on customs audit presented by China and strongly supported the idea of it replacing the earlier version of the proposal currently contained in the Draft Consolidated Negotiating Text.

15. The representative of the United States introduced JOB/TF/5, noting that the US was very pleased to present, together with the delegation of Hong Kong China, a proposed revised draft of the provisions on internet publication for the Negotiating Group's consideration.

16. The relevant provisions were currently reflected in Article 1, paragraph 2 of the Draft Consolidated Negotiating Text, which was listed on page 5 of document TN/TF/W/165/Rev.2. Over the past few months, the United States and Hong Kong China had met intersessionally with the Geneva delegations of Members who had commented extensively on the earlier version of the text or inserted suggestions last fall and earlier in the current year. They had found that delegations, both in Geneva and in the capitals, were eager to help streamline the text and to provide momentum to the Trade Facilitation negotiations.

17. One important discovery that they had made was that, in some instances, a Member might have proposed lowering the level of ambition for the entire proposal only because one element was problematic. They had found several instances in the Draft Consolidated Text where the placement of square brackets might have resulted in throwing out the baby with the bathwater. In order to be specific, it might be helpful to review the separate strands that existed in the current text.

18. As originally conceived in 2005, the proposal for internet publication simply proposed a commitment to publish two things that traders said would make a huge contribution to facilitating global trade, particularly with developing countries.

19. The first consisted of a layman's description of trade procedures in the form of a practical guide, distinct from the general GATT Article X requirement to publish the actual texts of the laws, regulations etc.

20. The second consisted the actual forms that traders had to fill out in order to import. The United States continued to find that other Members were hearing the same from their traders and were inclined to support a well-drafted commitment of this nature. The sponsors therefore continued to propose that those elements formed part of the commitment set out in paragraph 2.1.

21. At the request of one delegation, a bracketed reference to "to the extent possible" remained. It was hoped, however, that eventually all Members would recognize that their own exporters would be delighted to hear of a serious commitment on the matter.

22. The previous version of the proposal contained in TN/TF/W/165 had included two adjectives concerning the description, stating that it had to be "full and precise". At the request of the African Group and other Members, the revised version dropped those words in paragraph 2.1(a). The phrase "full and precise" had been eliminated. The United States had heard that delegations considered the remaining text, particularly the expression "that informs traders of the practical steps needed" to be helpful and to offer sufficient guidance for their government officials who would be implementing this provision.

23. In addition to these items now reflected in paragraph 1, there were two additional ideas in the current draft text that had been set out separately. The first was the proposal to publish the description in a WTO language, which was now contained in paragraph 2.2 of the proposed revision. The second consisted of the idea of publishing all other GATT Article X-related items, the laws, regulations, rulings and the like, on the internet, which was now set out in paragraph 2.3 of the proposed revision. The United States would have no problem undertaking such a commitment, but they and the Hong Kong China delegation had heard from a number of Members who were hesitant to do that and who did not consider these objectives to be the top priority. This had led to the language being drafted more in the form of an encouragement than a commitment.

24. Obviously, there was a room for further discussion and negotiation on all of those elements. But the United States hoped that delegations would find the proposed changes and the new structure of the revised text to be helpful and more amenable to reaching a final agreement on this sub-section. While they understood that a few delegations would seek further improvements even to this text, the United States hoped that everybody would consider it a better vehicle for future negotiations.

25. The representative of Hong Kong China co-introduced JOB/TF/5, explaining that his delegation had been meeting with the United States and with other delegations over the past months to discuss the part of the Draft Consolidated Negotiating Text relating to internet publication.

26. The only objective they had had in mind when undertaking that work was to help clean up the text. In the process, many delegations had made very useful suggestions. As a result, the United States and Hong Kong China were now able to propose some changes to the existing text. Those modifications did not change the key elements of the original text. Rather, they aimed at presenting them in a more logical and systematic way.

27. For instance, as mentioned by the United States, paragraph 2.1 was one of the mandatory requirements that were essential to traders while not posing any unnecessary burdens to Members.

Paragraphs 2.2 and 2.3, on the other hand, contained elements that, after some discussion, had been considered desirable, but not strictly necessary.

28. The sponsors hoped that the proposed revised text would provide a better vehicle and basis for further discussions.

29. The representative of Switzerland introduced proposal TN/TF/W/170, recalling that at the last meeting of the NGTF in March, Switzerland had circulated a room paper on two customs procedures: (i) customs procedures relating to temporary admission and (ii) customs procedures on inward and outward processing. Based on the generally positive feedback they had received since then in bilateral meetings and on the basis on the room paper mentioned before, Switzerland had decided to turn the room paper into a fully-fledged proposal so as to allow for more consideration and discussion of its provisions by the Negotiating Group.

30. The rationale behind the proposal was as follows: It was certainly true to say that the world had changed since the GATT had been written. It had become more globalized, which meant that, among other things, more and more of the goods that crossed borders were not destined for permanent importation but exited the customs territory again within a specified period either without having undergone any significant change or after manufacturing, processing or repair. Everybody knew about the existing vertical integration and the global supply-chains that spanned the globe. These exchanges, these movements of goods in and out of countries were also testimony of the intensified cultural, scientific, educational and economic relations that drew countries together.

31. By granting total or partial exemptions from import duties and taxes to such goods entering a customs territory on a temporary basis, these exchanges, and trade more broadly could be greatly facilitated and important economic gains could be achieved. In addition, those procedures also allowed for more intense cultural, scientific and educational exchanges. The benefits were way larger than just economic.

32. In drafting this proposal, Switzerland had first thought to include precise language on the scope of these customs procedures, more specific criteria that would have to be used in deciding if those customs procedures applied and more detailed specifications of the relevant international standards which Switzerland believed to be of use in implementing those customs procedures.

33. In the end, those elements had not been included in the present proposal as it would have made it more ambitious, but also less flexible. As it was drafted now, the proposal provided great flexibility to all Members and the level of ambition was not overly high. Most, if not all Members were already compliant with these provisions.

34. Against this background, it was hoped that the tabled proposal would find a warm welcome. The Swiss delegation was looking forward to reactions from Members and to discussions on the new text.

35. The representative of Korea introduced proposal JOB/TF/6 on the establishment of a Single Window. A small group meeting had been held on the issue of a Single Window system on 10 March, organized by the proponents, including Singapore, Thailand and Korea. Around 20 Members had participated in that session. The proponents had offered explanations of the importance of a Single Window system and had also recalled the implications of each individual item. The participating Members then engaged in discussions on the matter with a view to cleaning up the square brackets, mostly focusing on non-controversial issues. The outcome of the small groups meeting was circulated as a Job document (JOB/TF/6).

36. Korea wished to highlight the major outcome of the small group meeting, starting with those relating to sub-paragraph 5.1. The meeting had shown that there was consensus on the deletion of the bracketed wording "in so far as possible" in that sub-paragraph. As far as the wording, "where practicable" was concerned, the related bracket had been retained in the Job document whereas it had been deleted in TN/TF/W/165/Rev.2.

37. The reference to "where practicable" was closely linked to the subsequent wording options such as "shall", "may" or "endeavour to" in order to determine the level of obligation. It was Korea's understanding that there was no consensus on the deletion of the bracket around "where practicable", in both the main session and at the 8 March small group meeting.

38. Korea had never agreed to delete the bracket around "where practicable". This was why the Korean delegation would like to suggest to insertion of brackets around these words "where practicable" in the Draft Consolidated Negotiating Text.

39. The small group meeting had also led to an agreement on the deletion of the bracketed words "to all stakeholders in international trade procedures". As Members knew, the EU had expressed major reservations regarding the deletion of the bracketed wording at the 8 March session. However, they had later kindly consented to deleting the bracketed text. As a matter of fact, the bracketed wording "to all stakeholders in international trade procedures" was neither appropriate from a grammatical point of view nor from the context of the functioning of the Single Window.

40. The small group meeting had also produced an agreement to delete the bracketed wording "or agencies which require them" whereas there was no bracket around those words in TN/TF/W/165/Rev.2.

41. Korea wished to reiterate the function of a Single Window for Members' better understanding. The Single Window was a kind of endeavour to establish a virtual window. For instance, if an importer wanted to import a certain good, he could simply log on to the Single Window website, which would then help with the required documentation necessary for importation. The importer filled out the online form, or, if necessary, he could attach the other required documentation to the Single Window website as an electronic file.

42. The Single Window would then send the submitted documentation to the relevant authorities. Those authorities would communicate their findings to customs via the Single Window. Then, based on their findings, the customs authorities would make a decision and also send their final decision to the importer by the way of the Single Window.

43. Under the Single Window system, the submitted documentation was supposed to be send to the relevant authorities designated as "participating authorities" through the online information system. It therefore did not originate from those who had submitted the documentation to the agencies which required them. As a result, the reference to "or agencies which require them" should be deleted in the Draft Consolidated Negotiating Text.

44. Moving on to sub-paragraph 5.2, it should be noted that it prescribed the online prohibition of certain documentation requests. This was because under the Single Window system, all processes had to be made online. The same documentation should therefore not be requested again. No brackets had been eliminated from that section as a result of there not being an agreement on the matter.

45. Sub-paragraph 5.3 aimed at communicating information about the Single Window a Member was operating. Once a Member had notified relevant information about its Single Window their to the WTO Secretariat, business could get the relevant information through the WTO website. As far as

removal of brackets was concerned, there had been no consensus amongst the participants of the small group meeting.

46. Sub-paragraph 5.4 sought to encourage the use of information technology. In reality, it was not possible to operate a Single Window system without the aid of information technology.

47. Sub-paragraph 5.5 contained a reference which was useful for the introduction of a Single Window. It did not intend to require the introduction of any international standard.

48. As far as the "cleaning up" of these sections was concerned, there had been consensus on the deletion of the bracketed wording "in line with international standards" in sub-paragraph 5.4 and on the deletion of paragraph 5.5 as a whole, in case of the matter being addressed as a cross-cutting issue at a later stage.

49. Lastly, sub-paragraph 5.6 prescribed how to expand the participating authorities stage-by-stage. It had nothing to do with special and differential treatment matters. There was a specific background for the introduction of sub-paragraph 5.6 that Korea wished to illustrate for Members' better understanding.

50. For example, if there were three relevant authorities dealing with animal importation in a given country and five relevant authorities dealing with the importation of plants, with the plant-related authorities not being able to participate in the Single Window system due to the domestic situation, one could limit the scope of a Single Window only to the importation of animals. In this case, the number of the participating authorities would be three. If the scope of the Single Window was limited to plant importation, then the number of participating authorities would be five. If, on the other hand, the Single Window was opened up to both animal and plant importation, the number of participating authorities would be eight. The number of participating authorities could be decided upon depending on a country's domestic situation.

51. As had been said before, sub-paragraph 5.6 had nothing to do with special and differential treatment. Participants of the small group meeting had agreed to delete the bracketed wording "all developing and least-developed countries".

52. The sponsoring delegations looked forward to Members' kind consideration of the new text so that the cleaning-up efforts of the 10 March meeting could be duly reflected in the Draft Consolidated Negotiating Text.

53. The representative of Canada introduced document JOB/TF/7. As had been reported by the delegations of Canada and Norway in March, an open-ended session had been organized to discuss the proposal on border-agency cooperation, currently contained in TN/TF/W/165/Rev.2.

54. At the March meeting the outcome of that session had been presented in the form of a room document. It had now been turned into a Job document. The sponsors wished to thank those Members who had come to the open-ended session and had offered very constructive, practical comments and suggestions. The purpose of the session had been to clean-up the text, particularly the overlapping suggestions that had been made by Members in the NGTF discussion, including additions made to the original proposal by the proponents.

55. The open-ended session had not attempted to solve some of the more contentious issues such as the "shall ensure" versus "shall endeavour" issue contained in paragraph 1.1.

56. Paragraph 1.2 was an attempt to lay out the various examples of cross-border agency cooperation and to make them better understood. It was an illustrative list and not exhaustive. This

responded to requests that had been made by Members, particularly from developing countries, to lay out some of the examples in some kind of incremental order of what would be examples of cross-border agency cooperation. It was generally agreed by everybody that this was a non-mandatory commitment. The language in paragraph 1.2 was of a best-endeavour nature.

57. In an effort to move Members forward, the delegations of Canada and Norway proposed that the revised version of the proposal replaced the current version in the Draft Consolidated Negotiating Text as a basis for further discussions in future meetings.

58. The representative of Norway introduced document TN/TF/W/171, explaining that it was a very short proposal for a draft text on dispute settlement. As pointed out in the communication, Norway considered it time to present a proposal on the matter, especially since there was language in section II of the Draft Consolidated Negotiating Text (TN/TF/W/165/Rev.2) that contained exceptions to the right of dispute settlement. The proposal for a grace period in subheading 7 of part II was an example for that.

59. Dispute settlement had been referred to as one of the cross-cutting issues. Norway wished to present a very simple text on the matter. It was hoped that it was something Members could relatively easily agree upon.

60. Different WTO Agreements contained different models regarding the use of dispute settlement. Norway had taken Article 30 of the Subsidies Agreement as a model, although there were similar provisions in other Agreements such as in Article 6 of the Import Licensing Agreement and in Article 14 of the Safeguards Agreement.

61. As pointed out in paragraph 2 the communication, the exceptions or adaptations for dispute settlement purposes could be addressed either in the article on dispute settlement itself or in the substantive articles. Where exactly this should be placed at the end of the day could be addressed at a later stage.

62. It was not yet clear if there was a need to make a more specific provision for the application of what was being now discussed in the NAMA negotiations on NTMs and on the related horizontal mechanism. That mechanism did relate to consultations and not to the hardcore rights and obligations of the WTO dispute settlement understanding as such. Norway did not have any strong views on the question of whether this should be reflected in the Trade Facilitation Agreement at all. But it was definitely one of the issues they had looked at when discussing the issue of dispute settlement in the capital.

63. The representative of Norway introduced JOB/TF/8 on the use of international standards, on behalf of the co-sponsoring delegations of South Africa, Switzerland and Norway.

64. The Draft Consolidated Negotiating Text (TN/TF/W/165/Rev.2) contained three proposals regarding international standards, two from the original proponents of the use of international standards and one from the ACP Group.

65. During the period between the last negotiating round and the current one, there had been a number of bilateral meetings with delegations with a focus on streamlining the textual basis, consolidating those three texts into one. There had been no intention to add or subtract anything of substance, but the wish to have one text Members could base their further negotiations on, as opposed to three.

66. Norway hoped to see from the current meeting that Members would be comfortable with the substitution of the three texts currently contained in the TN/TF/W/165/Rev.2 document with the one text presented in JOB/TF/8.

67. As Members would notice, the text still contained brackets in most of the paragraphs. But it was hoped that in the next round of negotiations, Members could start looking at how to agree on what brackets could be taken out.

68. The representative of Australia introduced JOB/TF/9 on behalf of Canada, Turkey, the United States and Australia. The sponsors were pleased to present a revised version of their advance rulings proposal which dated from 28 May 2010. It was the result of extensive consultations with other Members at the margins of the last Negotiating Group meeting in March as well as intersessionally.

69. These consultations had been conducted specifically with those Members who had previously offered comments or had suggested alternative text. The consultations were conducted in different configurations and proved to be very productive exchanges, allowing Members to gain a better understanding of each others' positions.

70. The scope of the advance rulings provisions had not been discussed in the consultations. It had been considered best to leave that for later. As a result, all expressed positions on scope had been preserved in the proposal. This also meant that there was no need for Members to reinforce their alternative approaches on scope in the discussions of the current meeting since they were all reflected in JOB/TF/9.

71. The key objective of the consultations had been to reduce the number of options reflected as square brackets in the text. Looking at pages 2 and 3 of the document, the so-called clean version, one would note that it reflected the outcomes of the discussions, while pages 4 and 5 showed the modifications undertaken, which was reflected as strikethrough or underlined text.

72. Without going into the detail of every change made, Australia wished to draw Members' attention to some of the key modifications. First, the time period to issue an advance ruling had been reduced to two options which the sponsors believed provided a basis to move forward on this important element.

73. To address concerns expressed in the consultations, Members should note that a footnote had been introduced to clarify that Members were not required to provide a judicial appeal of an advance ruling or a decision to revoke or modify a ruling. Paragraph 1.2 had undergone some slight modifications as well which could be seen on page 4 of JOB/TF/9.

74. The sponsors looked forward to further discussion on the proposal on advance rulings. They hoped that Members could agree to the revised text in JOB/TF/9 as a replacement of the current Article 3 text contained in TN/TF/W/165/Rev.2 as a basis for further negotiation.

75. The representative of El Salvador presented document TN/TF/W/172 on behalf of the delegations of Guatemala, Honduras and El Salvador, saying that it was his pleasure to formally introduce their text-based legal proposal for special and differential treatment to the Negotiating Group.

76. The document was already reflected in the working papers used by the Negotiating Group. But the sponsors had considered it important to distribute it officially in order for it to be available for Members to look it up on the WTO website, both for delegations in Geneva and for the authorities back in the capitals.

77. In terms of adjustments, with respect to the provisions on Category C, and related measures and sub-measures, the proponents of TN/TF/W/172 wished to underscore that the text was practically identical to the one included in the Draft Consolidated Negotiating Text and in the comparison table prepared and circulated by the WTO Secretariat.

78. The only main change related to the first part of footnote 6 of the proposal. There, the idea was that the notification of measures to be included in category C included the donors that, at the date of submission of the implementation plan, had agreed to provide the necessary assistance to help with the implementation of a provision or sub-part of a provision. It also stated that the notification should include information where a donor had not been identified for provisions or sub-parts of provisions.

79. This took care of cases where assistance was received by developing countries, either bilaterally or regionally, but where a transition period was still necessary in order for the measure to be implemented.

80. In conclusion, it should be recalled that the proposal had already been shared with delegations in various formats since last year. The proponents of TN/TF/W/172 wished to stress that the proposal on legal language for special and differential treatment was an initial text, a starting point for discussions within the Negotiating Group. They looked to Members' input on any of the areas which required a review.

81. The sponsors felt that an in-depth discussion on document TN/TF/W/172 had already taken place to some extent. Therefore, they wished to continue discussing it in tandem with the other two proposals on this area, namely the text presented by the ACP Group and the proposal by the United States.

82. 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

83. 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.

84. It was so agreed.

C. OTHER BUSINESS

85. The Chairman addressed the issue of the Negotiating Group's next meeting, suggesting to hold it from 12 – 16 July. Details regarding its content and structure would be communicated to Members in due course.

86. It was so agreed.

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

88. The meeting was adjourned.
