

Memo for the WCO Informal Study Group meeting on the WTO Trade Facilitation Negotiations

(Subject : WTO TFNG meeting from 10 to 14 December 2007)

Note : The WCO Secretariat attended the WTO Meeting. I prepared this memo for my own use at the WCO Informal Study Group meeting on 19 December 2007. These notes are available on the WCO Web site, as requested by the Members participating in the WCO Informal Study Group. Members who would like to use the contents of these notes must contact their own information source in Geneva/the Capital (e.g. : Geneva delegation office, Ministry of Foreign Affairs, Ministry of Commerce, etc.) for verification.

19 December 2007
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Procedures for the December 2007 WTO TFNG

1. The WTO Chairman set out the following procedures for the WTO TFNG meeting :
 - The week began with a plenary session during the morning of 10 December, at which new and revised WTO documents were presented. The formal plenary session on Monday morning was followed by an informal plenary working session led by the Chairman;
 - The WTO TFNG Chairman organized informal plenary working sessions on the WTO Members' proposals regarding Article VIII of the GATT as well as special and differential treatment (S&D). Thursday was given over to questions relating to technical assistance (TA), capacity building and S&D;
 - The week-long meeting concluded with a formal plenary session on Friday 14 December, which took stock of progress during the week.
2. On the Monday, WTO Members worked on :
 - Right of appeal
 - Fees and charges
 - Reduction/limitation and periodic review of formalities and requirements regarding documents
 - Simplification and harmonization of trade documents
 - Use of international standards
 - Acceptance of commercially available information and of copies.

The other proposals relating to Article VIII were examined on Tuesday 11 and Wednesday 12 December.

Interesting points in the negotiations

Discussions during the formal session

3. Several revised proposals were presented. Firstly, Japan gave an explanation of the revised version of Doc. TN/TF/W/116 on right of appeal. The main amendments were aimed at deleting paragraphs 5 and 6 on S&D (aspect examined horizontally) and improving the drafting of the text (taking previous comments into account). New elements were also added, such as a clear distinction between levels of appeal (paragraph 1 (a) and (b)), the possibility for the legislation to provide for the requirement to enter an administrative appeal before the judicial appeal (paragraph 2) as well as the possibility of entering an appeal at a higher level should the deadline be exceeded (paragraph 4). This new proposal appeared to be fundamentally in keeping with the provisions of Chapter 10 of the General Annex to the RKC. WTO Members welcomed this revised proposal, but made a number of new comments (paragraph 6, “person against traders”, “independent authority against higher instance”, period set solely for the administrative appeal, etc.). Following a large number of questions, Japan circulated a non-paper providing a set of replies.
4. The review of the proposal on simplification and harmonization of trade documents (Doc. TN/TF/W/130/Rev.1) was then presented by Switzerland. In this respect, it was worth stressing the deletion of the last paragraph of this proposal regarding Articles XX and XXI and the addition to paragraph 2 (iii) (...interchanged and **inter-operated**...). This proposal was, for the most part, in keeping with the WCO's instruments (see Annex II to Doc. PC0192).
5. Switzerland and Norway circulated the WCO's Glossary of International Customs Terms (reference JOB (07)/213 of 7 December 2007) to help WTO Members better understand the proposals and the drafting of trade facilitation measures. This document would be available in Spanish, but it was stressed that only the French and English versions were deemed authentic.
6. Angola circulated a note on the progressive elimination of pre-shipment inspections. Therein, Angola referred to the implications of this proposal for the WTO Multilateral Agreement on Preshipment Inspection (having entered into force in 1995), thus making it ineffective. In Angola, compulsory PSI was required in order to safeguard public health and the environment (and, in limited cases, check the quality and value).
7. The United States presented Doc. TN/TF/W/151 on TA activities in the TF domain (on a country by country basis, and with a description of each project).

Discussions during the informal session

8. Doc. TN/TF/W/107 concerning fees and charges was the subject of much discussion. In particular, the issue of whether the clarification stating that “fees and charges shall not be calculated on an *ad valorem* basis” (b, 3rd indent) should be maintained provoked lively discussions and a compromise could not be reached (not necessary as it was already covered by the 2nd indent; necessary as it was a precedent; other solution introducing the concept of a ceiling provided that it did not exceed the cost of the services rendered). There was also a proposal to remove the horizontal provisions such as the publication of these fees and charges where there was a sufficient time period between the publication and their entry into force (already taken into account under Article X) in order to avoid duplication. Other Members also

stressed the need to explicitly exclude internal fees and charges, and numerous drafting proposals were put forward during these discussions.

9. The question of the use of international standards was once again widely discussed through the new version of Doc. TN/TF/W/131/Rev.1. No consensus appeared to have been reached in this respect. WTO Members considered it vital not to reinvent the wheel and to base themselves on existing international standards (best practices). However, several WTO Members did not support the approach currently put forward and wondered how international instruments which had not been adopted by the majority of WTO Members would be incorporated in the texts (and with what leeway?). Other Members wished to work on a case by case basis and not use cross-references to the various existing standards (but rather reuse the content only). The need for greater clarity (to determine the instruments referenced – what standards were actually needed?) as well as flexibility (leeway for WTO Members – the current text appeared to be too strict/binding) was also raised by several delegations. Switzerland highlighted the need to implement these standards (and not accession thereto) as well as paragraph 3 making it possible not to use these standards.
10. For many Members, the proposed text on the acceptance of commercially available information and of copies (Doc. TN/TF/W/112) was difficult to accept unchanged (as the originals were required, no facility to transmit documents electronically, etc.). Other Members strongly supported these principles (EC, Switzerland, etc.) and underlined the flexible nature of the implementation of this proposal (...shall endeavour...).
11. Other interesting results to arise from the week's negotiations :
 - with regard to the proposal to progressively eliminate pre-shipment inspections, it was proposed that it be made voluntary in nature (and not binding) and to restrict it to the Customs value;
 - as for the proposal on phasing out mandatory use of Customs brokers, it was suggested that an exception be included to take account of economies with a large informal sector. In response to this suggestion, it was pointed out that in this case, any operator meeting the criteria set by Customs could obtain the licence;
 - with regard to co-ordination between border agencies (TN/TF/W/128), some Members wanted a more binding text (deletion of "endeavour to encourage");
 - as for pre-arrival processing (TN/TF/W/117), Members wanted greater flexibility and not to retain the binding method;
 - in terms of expedited shipments (TN/TF/W/144), it was suggested deleting the reference to "(e) these procedures shall apply without regard to weight or customs value"; to amend the reference to an hour by greater flexibility; to reduce the level of \$ 200 (relief from Customs duty); to extend the scope;
 - regarding risk management and authorized traders, a large number of suggestions were put forward to clarify the current texts;
 - the use of post-clearance audits (TN/TF/W/134) should be less prescriptive;
 - a general reservation was entered regarding the establishment and publication of average release and clearance times (TN/TF/W/139).
12. At the end of the meeting, the Chairman welcomed the headway in the discussions. Overall, like the November meeting, he was satisfied with the progress made during this meeting and the very positive and constructive climate throughout. More

specifically, he said that a great deal of progress had been made regarding the proposals on Article VIII (improvement of the texts) as well as in the area of S&D and TA. The Group had made good progress on this last matter, but still had to find common ground. Moreover, he wanted the next meeting to focus on this issue as well as on the proposals for Article V. The majority of speakers had also expressed their satisfaction and felt that progress had been good, but that efforts had to be heightened, especially with regard to S&D and TA. Many delegations, and India in particular, indeed felt that they could no longer negotiate or move forward regarding the content of the proposals (with the exclusion of the “best endeavour” proposals) until an S&D and TA system had been finalized. The Group therefore felt that various initiatives could be taken during the intersession (inter alia through the Chairman and the originators of the proposals). Consideration should also be given to a more global approach, even though the Members welcomed the initial rationalization efforts undertaken to eliminate any overlap between proposals. Several delegations (United States, Hong Kong, Japan, EU) suggested continuing the examination of the proposals relating to Article X at the next TFNG.

13. With regard to the TA granted during the negotiations to developing and least developed countries, it was worth noting that national needs assessments had taken place in the following countries : Zambia (February), Mexico (September), Mauritius - Bangladesh-Tanzania (October), Burundi-Paraguay (November), Jordan-Uganda-Honduras (December). Once again, the establishment of a national committee to monitor the negotiations was deemed as a critical factor for the full participation of these countries in the negotiations. In this respect, various delegates stressed the need for assistance to bring together representatives in Geneva and their counterparts in the capitals. As for the support offered by the Annex D Organizations, they had provided a joint declaration at the end of the TFNG meeting. The Annex D Organizations had held a meeting in the margins of the TFNG on Tuesday 11 December to plan the TA missions for self-assessment of needs and to improve the Self-Assessment Guide (TN/TF/W/143).

Next WTO TFNG meeting

The next TFNG meeting was provisionally planned for the week of 18 February 2008.

Secretariat comments on the procedures for the WTO Trade Facilitation Negotiations

The WTO's drafting work during the week was carried out during informal meetings with the WTO Members involved, to which the WCO Secretariat did not have access. In order to protect the interests of the WCO and Customs during the WTO negotiations, the Secretariat was continuing to encourage WCO Members to play a greater role in the WTO negotiation process.

By way of reminder, the production of the Annex to Doc. PC0192 was aimed at enabling Member administrations to effectively engage in the WTO negotiation process and to inspire a possible review of the WCO's instruments and tools.
