

Notes for the WCO Informal Study Group on the WTO Trade Facilitation Negotiations

(Subject : WTO TFNG meeting from 23 to 27 February 2009)

Note : The WCO Secretariat attended the WTO Meeting. These notes are available on the WCO Web site, as requested by the Members participating in the WCO Informal Study Group, and were prepared for my personal use. 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.

5 March 2009
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Procedures for the February 2009 WTO TFNG

1. The WTO TFNG meeting proceeded as follows :
 - the meeting began with a formal plenary session (presentation of new proposals), followed by an informal plenary working session led by the Chairman. In the course of the meeting, the Chairman organized several informal plenary working sessions on WTO Members' proposals regarding Articles V, VIII and X of the GATT. The new and/or revised WTO documents which were presented and discussed were Docs. TN/TF/W/155/Rev.1 (Publication and availability of information), TN/TF/W/117/Rev.1 (Pre-arrival processing), TN/TF/W/140/Rev.1 (Risk management), TN/TF/W/157 and TN/TF/W/158 (Trade Facilitation Committee), G/SPS/GEN/909 (Report of the Codex Alimentarius Commission) and JOB (09)/9 (Institutional matters);
 - the last day focused mainly on the S&D issue, technical assistance (TA) and capacity building (CB) (see Docs. JOB(09)/11 and JOB(09)/12), and concluded with a formal session on Friday 27 February which took stock of progress made during the course of the week and authorized the Annex D Organizations to participate in the next meeting;
 - in addition, the Delegation of Norway briefly reported on the meeting held on 4 December 2008 with the "donors" and Annex D Organizations to share their experience in the areas of TA, progress achieved in terms of TF, S&D as well as on the mechanisms for implementing commitments. At the end of its presentation, Norway said that it would make sense to hold a second meeting to pursue this extremely interesting and productive work.
 - finally, the World Bank organized a meeting with the Annex D Organizations on Tuesday 24 February to discuss the development of a guide to help members develop their individual TA/CB action plans. Preliminary discussions were also held on the TA and CB mechanisms following the needs self-assessment process (Phase II), and this information was shared with members.

Interesting points in the negotiations

Article VIII

2. With regard to the fees and charges applicable to import and export, clarification was provided about the scope of this proposal. There was general consensus that acceptance of this proposal also covered the services rendered by other private entities, other than customs, and other administrative authorities. The issue of transparency nevertheless remains, as the rates applied by these companies are very often excessive and bear no relation to the services rendered. Moreover, it is also very difficult for some countries to regulate the taxes that should be collected by private entities.
3. Turning to the specific parameters, clarification was provided for the terms “in connection with importation or exportation” (paragraph 2), “approximate cost of services rendered” (paragraph 3) and on the authority with competence for determining the nature of the approximate cost (TF Committee, Members or the WTO as a last resort). Yet doubts still remain about the time period between publication and the entry into force of fees and charges (paragraph 8). Given the many questions, the proposal’s authors suggested that members encountering difficulties in interpreting this text should meet to find solutions in order to improve it.
4. With regard to pre-arrival processing (TN/TF/W/117/Rev.1), members suggested an examination not only of the “documentation”, but also of the “data” (add the terms “electronic data”) submitted by the importer or exporter prior to arrival of the goods and “means of transport” (part of sentence added).
5. The revised proposal concerning separation of release from final determination and payment of customs duties, taxes and fees contained in Doc.TN/TF/W/136/Rev.2 was discussed. Since this proposal is linked to the proposal on pre-arrival clearance, it was deemed useful to refer to “prior to arrival”. In this revised proposal, traders must meet “customs requirements”, and the terms relating to the financial guarantees were deleted (see paragraph 2). The terms “may request” were added, and the drafters of this proposal explained that this amendment is not aimed at preventing the detention of goods which might pose a risk, but that it is essentially aimed at obtaining a compromise from members regarding the acceptance of separation of release from customs clearance, but without the requirement for a guarantee. The lodgement of a guarantee should merely be optional and limited, which would offer greater flexibility to the proposal.
6. With regard to risk management and risk analysis, the proposals’ authors put forward the idea of merging the two proposals (W/140/REV.1 and W/ 148) and extending the scope to other criteria not listed in the proposals, but applied by members within their internal procedures. They recommended the establishment of a common framework for risk management, with more flexible, clearer and more objective criteria, to avoid discriminatory or arbitrary situations. Explanations were provided on the meaning of the terms “movements”, “examination of higher risk goods” and the references to selectivity criteria.
7. In respect of post-clearance audit (TN/TF/W/134 and Add.1), members agreed that this proposal describes an excessively strict audit system, whereas in the current systems used in many countries, there are other types of audit conducted either during clearance or post-clearance. The current terminology is consequently strictly binding and should be amended to offer greater flexibility to countries already applying other similar methods and meeting the same needs.

8. As for the measurement and publication of the average time for the release and clearance of goods (TN/TF/W/139/Rev.1 and Rev.1/Add.1), the differences between release and clearance are yet to be determined by mutual consent. Other members requested clarification on publication times and on the term "significant delay", which might occur for legitimate reasons.

Articles X and V

9. With regard to the measures concerning the publication and availability of information, Docs. TN/TF/W/155/Rev.1, TN/TF/W/145 and TN/TF/W/115/Rev.1 were the subject of further lengthy discussions. Several fundamental revisions have been made to clarify the texts under discussion, and several members stressed the fact that one should continue to work on this measure, given the strong reactions that this proposal elicited.
10. The proposal on advance rulings (see TN/TF/W/153) also prompted many comments and a great deal of members were still in favour of restricting these decisions to tariff classification, whereas other members, such as Australia and the United States, which furthermore have held an informal workshop on their respective advance ruling systems, wish to extend the scope of this measure. Other important issues were further discussed, such as those relating to staff authorized to submit a request for an advance ruling, the cost of these services and the confidential nature of this information.
11. Turning to appeal procedures, the right of appeal and set period (TN/TF/W/116/Rev.1), some members feel that the set period should be indicative and not prescriptive, as this is decided on a case by case basis. As for appeals, a general agreement appears to have been reached in favour of a reduction in formalities. It is therefore preferable to proceed directly with a judicial appeal, instead of commencing with an administrative appeal. The administrative procedure should not be obligatory prior to the judicial procedure. Likewise, the parties concerned may also have the right to use both procedures, hence the usefulness of replacing "and" by "or" (see paragraph 1 and 1(a)) which would accommodate the different positions (see paragraph 1(b)), offer a certain degree of flexibility and reduce bureaucracy and costs. Finally, in order to ensure that procedures are carried out in a non-discriminatory manner, some amendments have been made to paragraphs 2 and 3.
12. With regard to the appeal mechanism in a customs union and rapid alerts (TN/TF/W/122), members requested explanations about the terms "customs union", "economic integration movement", "inspection authorities" or "ensure the quality of food items" (see paragraph 1), as there are several types of customs union in which members do not have common jurisdiction or procedures. Wordings must therefore be found to ensure uniformity of decisions and appeals between the countries concerned, without actually mentioning customs unions.
13. As for rapid alerts, some members (such as the EC) felt that the text proposed was too restrictive and binding, and that it had to be changed in favour of a more practical system, with just as high a level of controls, but without prohibitions.
14. Concerning institutional matters, the discussions on the establishment of a Trade Facilitation Committee (see Doc. TN/TF/W/158) continued with a view to enhancing and supplementing the proposed existing text. Several members have submitted their needs

self-assessment and TF requirement reports and have stressed the importance of this Committee as the basis for continued self-assessment activities.

15. Some progress can be noted in terms of S&D, TA/CB and the other implementation issues. The friend of the Chair, Mr. Matthieu WILSON (Barbados) prepared a document which summarized 47 questions. These questions were briefly discussed by members, without actually replacing Argentina's proposal (JOB 08/44/Rev.1). The objective was to compile members' proposals and to produce a general document on TA and S&D. Despite the late publication of that document, members wanted the informal negotiations to intensify and many suggestions were made which clarified the positions of the different players.
16. With regard to needs self-assessment and TF requirements, there was agreement among members on the importance of this process. However, the question raised is whether it is necessary or vital to include this reference in the future TF Agreement.
17. The general opinion is that needs self-assessment is a voluntary exercise and that if all the requesting member countries have already carried out their self-assessment by the end of June 2009 and prior to signature of the Agreement, then there is no need to refer to this process in the body of the text of the Agreement on TF. However it should also be pointed out that some countries have not requested needs self-assessment, and that in this eventuality, there would also be no need to mention this in the Agreement.
18. If a country has requested a self-assessment and categories of engagements, but where this has not yet been carried out at the time of signing the Agreement, then this should be indicated and the WTO Secretariat should take measures to remedy this as soon as possible. However the Members did not specify the content and form of this procedure, or whether it should be mentioned in the Agreement.
19. It should nevertheless be pointed out that for some countries, this reference in the Agreement would be vital, especially to reassure the least developed and developing countries that are going to sign the Agreement and make commitments that go beyond their implementation capacity.
20. In terms of the actions to be carried out at the time of signature of the Agreement, and from a general perspective, members agreed that this time would be the date of signature of the Agreement or the date of entry into force. Countries would mention information on their category A, B, C or D commitments. However, this should not constitute an obligation, but rather an option to be left to the discretion of each country, given that some countries would not be in a position to identify the measures they would be able to apply at the time of the Agreement.
21. There was however a consensus whereby the category A measures would be measures that the member country is already applying and/or the commitments that it is capable of applying on the date of entry into force of the Agreement. These measures would be notified and would be binding at the time of entry into force of the Agreement.
22. However, differences remain with regard to the issue of determining the measures which would be covered by category A and the planned schedule for the presentation of this list of measures.

23. There was also a brief discussion on the establishment of a possible “peace clause” for the category A measures.
24. Finally, an agreement appears to have been reached on the fact that the Agreement should contain a description of the commitments anticipated for each category and one must ensure that all countries will be able to identify the category A commitments.
25. At the end of the meeting, the Chairman concluded by stating that the negotiations are making headway and that the work has proven useful. He stressed the importance of continuing to make new contributions in order to maintain this momentum.
26. In terms of TA and CB, 58 national self-assessment workshops to identify needs and priorities in the area of trade facilitation have been held to date, and close to 30 others are still expected to take place up to the end of August 2009.

Next WTO TFNG meeting

The date of the next TFNG meeting is scheduled for the week of 27 to 30 April 2009.

Secretariat comments on the procedures for the WTO Trade Facilitation Negotiations

In order to protect the interests of the WCO and customs during the WTO negotiations, the Secretariat continues to encourage WCO Members to participate in the WTO negotiation process.
