

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

(Subject : WTO TFNG meeting from 29 June to 3 July 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.

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Procedures for the June 2009 WTO TFNG

1. The WTO TFNG meeting proceeded as follows :
 - the meeting began with a formal plenary session (introduction of revised 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 and VIII of the GATT;
 - two days focused on the special and differential treatment (S&D) issue, led by the friend of the Chair (apart from the Wednesday afternoon). The meeting concluded with a formal session on Friday 3 July during which the Chairman took stock of the progress made during the week;
 - on Wednesday 1 July (afternoon), the Annex D Organizations were all invited, upon the initiative of Norway, to present their TA/CB activities in the trade facilitation domain and the WCO's presentation was well received. The World Bank also informed the TFNG, on behalf of the Annex D Organizations, of initiatives and activities carried out by these Organizations. In particular, reference was made to an ongoing project to develop the "Implementation Planning Guide";
 - Members were again reminded that neither the WCO nor its Secretariat participated directly in the WTO negotiations, only governments being entitled to do so. The WCO, like the Annex D Organizations, had observer status, but, from the April 2009 meeting onwards, the Annex D Organizations could no longer participate in the TFNG's informal sessions. This issue was tackled at the meeting, but with no progress being made. As a result, the Secretariat only participated in the Wednesday afternoon session;
 - over the course of the meeting, 44 officials from capitals (Africa and LDCs), receiving specific funding (provided by the European Communities, United Kingdom and Norway), participated in the negotiations and were consequently able to support their negotiators in Geneva. Such funding would again be available for the next meeting in October 2009.

Points of interest in the negotiations

Compilation (TN/TF/W/43/Rev.19)

2. The WCO Secretariat had just published the 19th revised version of the Compilation, which incorporated the following documents :
 - TN/TF/W/159 presented by the European Communities (proposal on trade facilitation);
 - TN/TF/W/138/Rev.3 presented by Korea, Singapore and Thailand (proposal on single window);
 - TN/TF/W/133/Rev.3 presented by the Former Yugoslav Republic of Macedonia, Mongolia, Switzerland and Swaziland (proposal on transit); and
 - TN/TF/W/146/Rev.2 presented by Cuba, Georgia, Moldova, Paraguay and Turkey (proposal on a free and transparent transit regime).
3. As announced at the last meeting, the Chairman had completed a review cycle of the texts at that time and had also tried out a new working method consisting of focusing on the drafting aspects of the proposals in order to reach a consensus (by eliminating or incorporating the comments previously made with regard to the proposals).

Article VIII

4. Members began by discussing Doc. TN/TF/W/107 (European Communities, Korea and Switzerland) on *fees and charges*. In particular, the EC proposed (see Doc. TN/TF/W/159) adding the following phrase (indicated in bold and italics) to the "Scope" of the provisions :

"The provisions [of this article] apply to all fees and charges, ***including shipping royalties or similar charges/taxes***," imposed...for importation or exportation."

It was also proposed to delete (under (b) "Specific parameters") the following indent "Fees and charges shall not exceed the approximate cost of the service provided" and substitute "Fees and charges shall not exceed the actual cost of the service provided".

5. With regard to the proposal on *coordination of activities and requirements of all border agencies* (I.1) as well as the proposal on *pre arrival processing* (G.1), the EC proposed two additions (see text of the new paragraphs in Doc. TN/TF/W/159) which raised comments and requests for clarification. Doc. TN/TF/W/112 on *acceptance of commercially available information and of copies* was also discussed and was the subject of requests for clarification and proposed amendments.
6. There was a proposal to merge Docs. TN/TF/W/124/Rev.2 and TN/TF/W/130/Rev.1 on the *reduction/limitation and periodic review of formalities and documentation requirements* and to cease referring to specific international standards in order to render this proposal less prescriptive. Other Members went further and proposed merging all the proposals referring to international standards (TN/TF/W/109, W/130, W/131, W/133, W/134, W/138, W/140 and W/148) in a single document and making it

a “best efforts” provision. More generally, a good many comments were made on the proposed Doc. TN/TF/W/131/Rev.1 on the *use of international standards*, in order to make it less prescriptive.

7. The revised proposal on the *single window* (Doc. TN/TF/W/138/Rev.3) was discussed with no substantial amendment being entered. Members continued to request that it be made a “best efforts” provision. Many of the discussions focused on the reference to “relevant authorities or agencies”, the notification process or else the number of single windows (one or several at national level – one for import/export). Proposed amendments to the text were also made. The principle of S&D was again recognized as being extremely important in order to be able to implement this measure progressively, taking account of countries’ requirements and capacities to implement it.
8. With regard to the proposal on *elimination of pre-shipment inspection* (TN/TF/W/108), the EC suggested adding a new paragraph specifying the ban on requiring the provision of shipping notes and associated documents as a condition for the import, unloading or transshipment of goods (see Doc. TN/TF/W/159). With regard to the meaning of the phrase “...use of pre-shipment inspections *or their equivalent* ...”, the authors pointed out that this also covered *inspections at destinations*.
9. As for the proposal on the *use of Customs brokers* (TN/TF/W/110), many Members wished to make it a “best efforts” provision and to render it less prescriptive. Some Members wished to eliminate item 4 (which fell within the competence of the services), or at the very least clarify it.

Article V

10. With regard to the revised proposal on *transit* (TN/TF/W/133/Rev.3), extremely lengthy discussions focused on the transit of energy products moved via fixed infrastructure. Members considered this to be a special case of transit, with specific characteristics, which should not be covered by the general measures in the proposal. As a result, it was suggested that a new text be drafted which was compatible with the energy sector. In this connection, it was also stated that pipelines should not be considered means of transport.
11. The EC also proposed an addition to (a) *Scope*, stating that “**Consignments which are being transhipped¹ shall not be subject to transit procedures**”. Some Members nevertheless questioned whether this addition was compatible with the current text which covered various situations, irrespective of whether or not transshipment took place.
12. The authors of proposal TN/TF/W/146/Rev.2 submitted a revised text on a *free and transparent transit regime*. This text was not intended to replace the text contained in Doc. TN/TF/W/133/Rev.2, but rather to supplement it. The first objective of the proposed text was to clarify the disciplines on the restrictions to transit traffic (Articles 1 and 2), ensure transparency in transit regimes (Article 3) and, finally, to ensure national treatment for transit (Article 4).

¹ Transshipment means “the goods are transferred under Customs control from the importing means of transport to the exporting means of transport within the area of one Customs office which is the office of both importation and exportation”.

13. Finally, numerous requests were made for clarification and amendment (e.g. elimination of paragraphs 14 and 17) of Doc. TN/TF/W/133/Rev.3.
14. Docs. TN/TF/W/123/Rev.2 and TN/TF/W/154 on *Customs cooperation* were also discussed. There was a desire to include greater flexibility and not to set a deadline (see paragraph 4 W/123).

Special and differential treatment (S&D)

15. With regard to S&D, the negotiations were led by the friend of the Chair (Mr. Matthew Wilson, Barbados). There appeared to be a consensus about applying the "Peace Clause" (for a certain period), meaning that the category A measures were not subject to the provisions of the dispute settlement proceedings for a certain period after the Agreement's entry into force. No consensus was reached on applying such a clause to the category B and C measures, given that the current implementation mechanisms already offered enough flexibility. However, an agreement was taking shape with regard to the non-application of dispute settlement proceedings during the period set for the implementation of these two categories. Some Members wanted the entire agreement not to be subject to dispute settlement proceedings (but no consensus was reached).
16. Nor was consensus reached with regard to having the option, after the entry into force, of transferring a category A measure to category B. However it would appear to be acceptable, subject to compliance with a clearly defined procedure, to transfer a category B measure to category C. Likewise, there also appeared to be a consensus about the possibility of extending the implementation period for measures falling in categories B and C, in accordance with a clearly defined procedure ("Early Warning Mechanism"). In this connection, a Member unable to meet the deadlines preset in its implementation plan would have to notify the Trade Facilitation Committee within a predetermined time period (the idea being to inform it as early as possible). The number of requests could also be limited. Finally, LDCs did not want any other dispute settlement proceedings to apply to them.
17. Turning to TA/CB, the mechanisms to be implemented in order to match the requests (from DCs and LDCs) to offers (from donor countries) were still under discussion and currently offered numerous options such as the development of a new platform linked to the future Trade Facilitation Committee (see the actual Committee), a mechanism developed by the donors/Annex D Organizations, a specific donor/recipient mechanism or else the sole use of existing mechanisms. There was a consensus about the fact that a country would not be required to implement a commitment (category C) until it had received the requisite technical assistance. In this respect, the Members initiated a discussion about the process to be followed when this occurred. Finally, there were the beginnings of an agreement whereby the Trade Facilitation Committee would play no role in "approving" whether an undertaking had been implemented or the requisite capacities provided. Once the Member's implementation plan had been decided on (period/TA), and provided no subsequent request was made ("no Early Warning Mechanism"), the Member would be considered to have met the requirements.

Conclusions of the Chairman

18. At the end of the meeting, the Chairman concluded by stating that objectives of the meeting were threefold : (i) discussing the revised proposals; (ii) completing a review cycle of the texts; and (iii) making headway in terms of S&D. There was also a desire to try out a new approach by focusing more heavily on the drafting of some proposals. He felt that these objectives had been met and welcomed the revisions made to certain proposals. He felt that, subject to a few amendments, the new procedure was appropriate/useful and he wished to use it more intensively at the next meeting

Next WTO TFNG meeting

The dates for the next TFNG are 5 to 9 October 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.
