

Negotiating Group on Trade Facilitation

SUMMARY MINUTES OF THE MEETING

Held in the Centre William Rappard
from 1-3 October 2007

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

1. The Chairman recalled that the proposed agenda for the meeting had been circulated in WTO/AIR/3067. As stated in this airgram, the meeting sought to further the negotiating efforts by providing for another forum to advance the discussions on the various proposals – both in terms of newly-made contributions and suggestions previously received.
2. The agenda was adopted.
3. The Chairman explained that the first item on the agenda aimed at furthering the negotiating business by addressing new contributions and allowing for additional feedback on those that had already been presented. It was – and continued to be – a primary task of the Negotiating Group on Trade Facilitation (NGTF) meetings that Members sought to achieve.
4. While being a standing topic of discussion since the early days of the Negotiating Group (NG), Members' deliberations had undergone some recent changes in that they tested a new meeting format. Extended in duration and combining different forms of exchanges such as plenary sessions, Chair consultations and activities organized by the Membership, the arrangement had produced very positive results by allowing for particularly interactive discussions and enhanced participation from the capitals – further facilitated by the generous funding from the Norwegian government.
5. It enabled Members to look into each of the mandate's main pillars – technical assistance, S&D treatment and the three GATT Articles – in a much more detailed way. Furthermore, it ensured that the Member-driven activities were more closely brought under a common umbrella and were firmly embedded into the NG's work. And all of this without dispensing with the inclusive, bottom-up working method that had proven crucial to the Group's success.
6. A concrete result of the new dynamic were the revised proposals that had emerged from the last session. They evidenced the constructive spirit prevailing at the discussions, enabling Members to improve their proposals and to build additional elements of common ground. They further underlined the Group's continued ability to make headway despite a demanding situation at the broader negotiating front. This capacity to produce tangible progress would be more crucial than ever, and he counted on delegations' continued efforts to make it all work.
7. The immediate task was to address the new contributions received for the present session. They would now be taken up in the plenary discussions with their sponsors being invited to introduce the main elements. In procedural terms, Members' deliberations would be conducted in the same

mode that had successfully been applied in the past, limiting formal elements to the presentation of new submissions while allowing for reactions to be made in informal mode.

A. PROPOSALS AND REACTIONS TO THE CONTRIBUTIONS PREVIOUSLY RECEIVED

8. This part of the meeting was conducted in informal mode with the exception of the following interventions:

9. The representative of India introduced proposal TN/TF/W/123/Rev.1, explaining that it was a revision of the draft textual proposal (TN/TF/W/123) India had submitted in July 2006 to operationalize the third pillar of the Trade Facilitation mandate contained in paragraph 1 of Annex D to provide for effective cooperation between customs or other appropriate authorities on customs compliance issues. The proposal had been discussed with Members who had sought clarifications or expressed their concerns regarding burdensomeness and confidentiality issues that might result. India was now in a position to introduce a revised draft text that sought to address those issues.

10. The major changes that had been made based on the discussions with Members were the following: A new paragraph 2 had been introduced to address the concerns of several Members that had requested for information not to be made in a routine manner and for the requesting Member to conduct a detailed internal verification before making a request. The elements of such internal verification that had been suggested were comprehensive and sought to ensure that a request for information to another Member was only made after internal verification had been exhausted.

11. Paragraph 5(a) provided that any exchange of information or documents should not require Members to modify any of their procedures. This was an addition to the earlier provisions. The objective was that any such commitment should not place an undue burden on Members to introduce any new processes only to comply with such a provision.

12. Many Members had expressed concern regarding confidentiality in treatment of the information exchanged. India had already earlier expressed its view that identical information should in any case be available with the customs administrations at both ends of a transaction. Nevertheless, India had now gone further by explicitly stating that any information or documents should be treated as confidential. They should not be disclosed to any third party. The only exception was in case of civil judicial proceedings. The proposal specifically stated that in case any such information was to be used in a criminal proceeding, it should only be done with the specific approval of the requested Member.

13. The fourth major change was to provide a cap on the requests that one Member could make to another in one calendar year. This was intended to reduce the burdensomeness of any commitment.

14. There were also some other drafting changes, including a provision that Members could bilaterally agree to exchange information in non-WTO languages. India had sought to address most of the concerns and would welcome any suggestions from Members to try and achieve a multilaterally satisfactory outcome.

15. The representative of Sri Lanka informed the Negotiating Group about his delegation's intention to co-sponsor the proposal.

16. The representative of South Africa said that his delegation wished to co-sponsor document TN/TF/W/123/Rev.1 as well.

17. The representative of the European Communities introduced document TN/TF/W/149, explaining that it was an update of the information the EC had on previous occasions given to the

Group. It was another compilation document which set out the TA programmes in the area of trade facilitation that were currently under way, programmes provided by the EC within the framework of its development aid, its partnerships or by individual EC Member states.

18. The document listed all the programmes that were being furnished. Rather than going through the paper in detail, he wished to highlight a few elements that were relevant to the discussions in the NG, in particular the discussions on S&DT and TA.

19. First of all, the document listed the programmes the EC were providing with its development partners, some of which were very general. Trade Facilitation was part of a much broader programme of trade cooperation infrastructure development. Other programmes, on the other hand, were very specific and some had been conscientiously negotiated and tailored to correspond to the future Trade Facilitation Agreement commitments the EC hoped would emerge from the process in Geneva.

20. The presented document, which set out a fairly extensive range of TA and development aid programmes on TF, hopefully demonstrated the EC's real commitment to providing assistance in this area. In the discussions that Members had had on S&DT over the last few months, a number of developing countries had very rightly made the point that they would have to be supported by capacity building and technical assistance for them to assume new commitments in the WTO in this area. He hoped that the programmes the EC were providing and which were set up in the presented note showed that the EC had supported, and would continue to support, its pledge of assistance with concrete action.

21. The aid programme the EC was providing would hopefully also help developing countries move ahead with the EC in constructing a good S&DT part of the future Agreement so that one could have a good link between the progressive assumption of commitments and the provision of assistance to support that.

22. As might be seen from this submission, the provision of assistance and development aid in the area of TF was often done as part of a more comprehensive development programme which was negotiated and concluded bilaterally or at a regional level between the EC and its development partners. This use of bilateral development aid programming was a tried and tested model and one to which development partners attached great importance.

23. He made this point because there had been proposals in the Group that, in the future, the provision of development aid could, or should, or might be done directly through the WTO. However, the EC had always maintained that, while the WTO could be an important platform for transparency for the exchange of information and for improved coordination of programmes, it could not in itself be the legal vehicle or the framework in which programmes were actually developed, negotiated and concluded between the EC and its development partners. The EC's principle development partners, notably the ACP countries through European Development funds, attached great importance to maintaining the development aid, including in this area, through the long-standing bilateral framework and channels.

24. Most Members who provided aid and assistance used the phrase "demand-driven". The EC responded to requests from development partners for TA or development aid in this area. The European Communities did not themselves unilaterally ask its partners to accept assistance in TF. This meant that it was essential that developing-country partners who wished to see support given, and who wished to see development aid programmes in the area of TF, made requests to the EC so that trade facilitation could indeed be incorporated into the programming. It had to be prioritized by the EC's cooperation partners. In practical terms, that meant that, in the future, as and when one was implementing commitments in this area, the EC would be expecting and hoping that its development partners would indeed seek to include TF assistance and support within the often broader trade and

infrastructure programmes the EC were providing. That was the linkage that the submission had with the discussions on S&DT in the NGTF.

25. The representative of Japan introduced proposals TN/TF/W/114/Rev.1 and TN/TF/W/115/Rev.1, saying that they were submitted with a view to accelerating the discussion and consolidation of the texts before the NGTF and to keeping up with progress in the other negotiating areas of the Doha Round. Both submissions represented revisions of earlier proposals.

26. Document TN/TF/W/114/Rev.1 had been modified in several regards, reflecting comments made by Members in previous NGTF meetings and including the elements requested by traders. Paragraph 3 of the preamble which related to S&DT and TACB had been updated and made comprehensive in order to reflect the intense horizontal discussions that had been taken place on this item since the submission of the original proposal. Consequently, paragraphs 5, 6, 10 and 11 of the earlier textual proposal had been deleted. A similar change had also been made to the preamble of TN/TF/W/115/Rev.1.

27. With respect to section C of proposal TN/TF/W/114/Rev.1, entitled "Outline of Major Trade-Related Procedures", many Members had requested clarification of the term "major trade-related procedures". In Japan's view, the term referred to those procedures without whose knowledge traders could not complete trade-related procedures or might be disadvantaged. This paragraph proposed the publication of an outline of such trade-related procedures in one of the WTO official languages instead of publication of all laws and regulations in one of the WTO official languages. This was meant to avoid a burden for Members regarding translation. Since each Member would eventually decide the extent of what measure constituted a major trade-related procedure, it seemed difficult to clearly define the concept of "major". Therefore, the adjective "major" had been deleted so that the text now merely read: "trade-related procedures" as opposed to the formulation "major trade-related procedures" used before.

28. Paragraph 5 of the revised textual proposal contained an additional provision for uniform interpretation and administration of laws and regulations in response to requests by traders. The original paragraph 8 had been deleted as a result of many Members expressing their concerns about primary or initial enquiry points. Japan hoped that the revision would add more comfort to those Members who had expressed concerns regard to the original version of TN/TF/W/114.

29. Turning to TN/TF/W/115/Rev.1, the Japanese representative explained that the preamble had been changed to take into account the intense discussions Members had had concerning S&DT. As a result, paragraph 5 of the original textual proposal had been deleted.

30. With regard to paragraph 1, in past NGTF meetings, some Members had referred to the necessity of general exceptions, for instance for urgent matters and for some constitutional reasons. In response to that request, the words "except in urgent circumstances and other limited exceptions which are made public" had been inserted. This would hopefully enhance Members' comfort with this paragraph. However, while exceptions might be needed, Japan believed that they should not be open-ended. Therefore, it was proposed for those limited exceptions to be made public. Consequently, the original paragraph 4 dealing with reservations had been deleted. The term "except in urgent circumstances" was already used in the SPS Agreement and "limited exceptions" was used in the TRIPs Agreement.

31. On the issue of prior consultation, as many Members had asked to limit the beneficiaries of this section to domestic traders and other interested bodies, the term "within their territories" had been added in paragraph 1. In paragraph 3, the term "within their territories" had been added as well.

32. The Chairman asked whether any delegation wished to make a statement for the record.

33. There were no requests.

34. 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

35. 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 NG on an ad hoc basis, as provided for in the Work Plan.

36. It was so agreed.

C. OTHER BUSINESS

37. The Chairman addressed the issue of the NG's next meeting. The dynamics of the broader negotiating process and the completeness of the agenda made this a somewhat challenging undertaking, limiting the choices to a few slots available. One of them was in the second week of November, starting as of Monday 5 November. Precise sequencing and scheduling were yet to be defined – and would be communicated to Members in good time – taking into account the developments on the larger negotiating front.

38. It was so agreed.

39. The representative of the European Communities thanked the Chair for outlining the plans for the next round of negotiations. The EC would encourage him to also consider the possibility of having some meetings prior to the next formal round because there was still a lot of work to do. Time was not unlimited and it was difficult to get into an effective and efficient drafting mode in a larger formal session. One had to move with the Chair's help and find some supplementary ways or methods to allow Members as a group to focus on the different texts or proposals and try to clean them up and reach agreement on different components of the documents. Obviously, Members would get together in the next few weeks to try to straighten out differences and find compromise proposals, but there was clearly a role for the Chair in helping Members to do that. He urged the Chair to reflect on the best way in which that could be done.

40. The representative of India wished to make a few remarks along the lines of the comments made by the EC. Perhaps there could be some consultations with Members ahead of the next meeting to get a sense of how Members wished to see further progress or what next steps they suggested. It would also allow Members to get a better sense of what the progress was in other areas of the negotiations and to that extent there was need for a change in the context of these negotiations. Perhaps there could be a fruitful dialogue with Members in the interim.

41. The representative of the United States expressed support for the suggestion to consult with Members inter-sessionally. The US would be happy to participate in consultations on the best way to move forward. The United States also wished to recall the fundamental concerns it had expressed with some of the proposals a few months ago. Washington was still open to engaging with others and hoped to receive new drafts from delegations on those issues. There was quite a bit of work ahead.

42. The representative of Hong Kong, China supported the idea expressed by EC and India. Additional informal consultations would be useful to supplement the plenary session because time was running out. Any additional way to have a better discussion and a better understanding of the status of the discussions would be very useful.

43. The representative of Korea said that his delegation was happy to support the ideas expressed by the European Communities.

44. The representative of Argentina said that the point raised was very relevant. Beyond the matter of the pace of the negotiations or the positions that each and every delegation had on specific matters, it was necessary to reflect whether one could make some changes in the working mechanism. There was a contradiction. Members had third generation proposals containing a legal text. However, the discussion on them was of a conceptual nature. There was a legal text on the one hand and a conceptual discussion on the other, with the outcome for the next meeting being the same legal text with some changes proposed by delegations that had had the opportunity to incorporate some points. But the NG continued to have the same conceptual discussion. From Argentina's point of view, and from an overall perspective, the themes had been identified. Members had differences and specific points on the extension and scope and there was legal text, but one needed some kind of mechanism to enable Members to make the discussion more concrete. Then Members would have some sort of result enabling them to see more clearly where one could find points of convergence and where differences remained. Argentina was not really clear on the central negotiating issues in each of the proposals. One had to find a mechanism that would assist Members to focus the discussion on those issues that were of great interest to them and on specific points in the proposed texts. It would be very time consuming if one had to negotiate legal texts. One had to clearly note where the differences were and see whether there was a possibility of resolving them. That was something Members had to reflect upon as a group.

45. The representative of Cuba supported the statement by Argentina. Cuba had already warned about the lack of a mechanism to take into account not just the ideas expressed by the proponents but also those by other delegations. Members should, as a group, think about how to address this absence and see how they could make progress. As a small delegation, Cuba also had to deal with other very important issues within the negotiations. This meant that Members had to step up the pace of the work without losing the participation one had had during the informal sessions. Cuba had repeatedly stated concerns. Sometimes they were taken into account, other times not, but certainly they should be incorporated in the final outcome of the negotiations.

46. The representative of Hong Kong, China said that Argentina had raised some very useful suggestions regarding an area Members could focus on. There might be merit in the two suggestions from India and Argentina for the Chair to consider holding some informal consultations on next steps before the next plenary meeting, including the identification of some of the negotiating issues that Members were thinking of discussing at the next plenary.

47. The Chairman said that he had taken note of the suggestions made and that he would reflect upon them. One of the characteristics of the NGTF had always been that of preserving transparency and a bottom-up approach. One should think about what had been said and endeavour to find the appropriate mechanisms to advance in the Group's work. He was completely open to meeting with delegations. One had to have the appropriate procedures in order to make progress. Precise time and structure of the next NGTF meeting would be communicated to Members later on.

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

49. The meeting was adjourned.
