WORLD TRADE ORGANIZATION

RESTRICTED

TN/TF/M/25
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Negotiating Group on Trade Facilitation

SUMMARY MINUTES OF THE MEETING

Held in the Centre William Rappard
from 14-18 July 2008

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/3214. As indicated in the airgram, the meeting sought to engage in focussed textual work on all elements of the mandate, looking also at the areas of technical assistance/capacity building (TACB) and S&D. In addition, Members would address the regular item of participation by the Annex D organizations.

2. The agenda was adopted.

3. The Chairman outlined his plans for the negotiating week. The structure of the sessions reflected their targeted objectives, focussing on textual work regarding the proposals under consideration. The individual texts would be taken up in the order that they had been reflected in the compilation document (TN/TF/W/43/Rev.15), starting with those relating to GATT Article X.

4. Questions linked to TACB and S&D would be taken up on Thursday. Friday would see the Negotiating Group (NG) address a few additional matters – including work related to assessing Trade Facilitation (TF) needs – before concluding in plenary mode.

5. All of those items would be addressed in a variety of formats to allow for a flexible approach. The morning sessions would be led by the Chair in open-ended, informal mode. He would also chair part of the afternoon discussions while also leaving room for engagements amongst Members. An additional event would take the form of training sessions for experts from ACP and LDC states. They were timed to allow for participation in the NGTF discussions as well. The presence of these capital experts had been made possible by the generous support from a number of EC Member states for which he wished to express his sincere thanks.

6. Together, those activities sought to allow for another constructive meeting that moved the NG an additional step ahead. The remaining amount of work was still considerable and time for its completion very limited. The following week might offer additional guidance on the specific timeframe for completing the NG's task. Members had to be prepared for an intensified mode of operation and could not risk falling behind.

7. The opening plenary was adjourned and the informal working sessions commenced.

A. NEW AND REVISED PROPOSALS

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

9. The representative of Barbados introduced TN/TF/W/129/Rev.2, explaining that it was a revised version of the original document TN/TF/W/129 on regional aspects of trade facilitation. It had been co-sponsored by a number of small and vulnerable economies (SVEs) such as Barbados, Cuba, Fiji, Papua New Guinea, and the Solomon Islands. Although other SVEs had not yet been in a position to co-sponsor the proposal at the present time, he had been assured that the issue of the regional dimension of TF measures and the provision of technical assistance on a regional basis was important for many of them. He also noted that the proposal had received a comfortable degree of support from other Members in the NG.

10. Revision 2 expanded on the original document and provided three specific legal drafting suggestions. The first could feasibly be included in the preamble section of an eventual Trade Facilitation Agreement as it recognized the regional aspect of TF and the additional option which developing Members could employ of using existing or new regional mechanisms to adopt and implement TF obligations. Section II spoke specifically to the measure on enquiry points and should be read with the explanatory footnote, which made clear that a regional approach did not undermine the national legal responsibilities of individual Members to whatever was agreed under the TF Agreement. The option of using a regional approach to enquiry points could fit quite comfortably with what appeared to be a growing consensus on what the expectations of an enquiry point would be.

11. The first section could be considered for inclusion in the still to be finalized language on technical assistance (TA) and capacity building (CB). With regard to the first paragraph, it might not be necessary to specify that TA and CB should be provided to national and regional enquiry points as this could be subsumed in more generic language on TA and CB. But the concept of support for establishment, modification and maintenance of measures was an important and crucial aspect of what the sponsors of the proposal would expect from TA and CB and should be included as core principals in any section on TA and CB.

12. The second paragraph of that first section could also be widened and included in a text on TA and CB to encapsulate the idea that assistance should also be provided to regional bodies and regional mechanisms, which would assist Members in the implementation of TF obligations.

13. The co-sponsors remained flexible with regard to the eventual specific language agreed to but emphasized that some of the concepts and principles on the role of TA and how it could be delivered as mentioned in the proposal should be reflected in the final outcome document.

14. The representative of India presented TN/TF/W/123/Rev.2, noting that is was equally sponsored by South Africa and Sri Lanka.

15. Four basic changes had been made. In the first paragraph, the text talked about the exchange of information and documents on matters such as HS classification, description, quantity, country of origin and valuation of goods. The concerns of some Members had been taken into account. The earlier version of the proposal had mentioned "full and accurate" before "description". This phrase had now been omitted although full and accurate information was required.

16. In paragraph 4(c), the word "certify" had been replaced by "confirm". Paragraph 7 stated that "each Member shall designate and notify to the WTO an agency within its administration for exchange of information and documents". In response to a concern expressed by Japan about the

earlier proposal's reference to "a centralized agency", India had changed the language. The new text now only referred to an "agency".

17. In paragraph 11, there was a new addition stating that "Information or documents exchanged shall not be used for purposes other than that for which it was sought, unless the requested Member agrees otherwise." That had primarily been done to accommodate the concerns of Switzerland and Japan. This was also already covered by the title of the proposal which referred to a "cooperation mechanism for customs compliance."

18. Members' concerns had mainly focussed on two points of the proposal. The first related to the alleged burdensomeness of the proposal. The second was the confidentiality issue. On the confidentiality aspect, the relevant paragraph had been amended to say that the information and the document exchange should not be required to be disclosed, except in judicial proceedings. Taking into account the concerns that had been expressed by delegations, particularly Japan, the revision now also stated that this information would not be used in criminal proceedings unless the requested Member agreed. The language used was no anathema to any Member. It could be found in many WTO instruments. Article X of the Customs Valuation Agreement, for instance, clearly authorized Members to disclose the information in judicial proceedings. It clearly stated that the information which was provided on a confidential basis was to be treated as confidential except to the extent that it might be required to be disclosed in judicial proceedings.

19. Identical language was used in Article 2(k) and in Article 3(i) of the WTO Agreement on Rules of Origin and in Article X of the Customs Valuation Agreement. Article 12.4 of the Agreement on Subsidies and Countervailing Measures and Article 6.5 of the Anti-Dumping Agreement equally talked about the protection of confidential information. Also, it should be kept in mind that the information could only be disclosed where it would be of significant competitive advantage to another party. In unjustifiable cases, the investigating authorities could also disregard this information.

20. Article X of GATT 1994 also talked about the protection of the information, but only where the disclosure would impede law enforcement or would be contrary to public interest or where this would prejudice the legitimate commercial interest of a particular enterprise. The current proposal did not talk about the information which would affect all those mentioned points. Rather, it related to the exchange of information and documents on HS classification, the quantity of the goods, valuation and country of origin. That was not information falling under the confidential category. In the case of customs clarification, for instance, there could be a situation in the exporting country where the exporter classified the goods under the category of cotton bags. The correct classification was 4202, but the Indian importer had classified it as 6307 which covered all sacks and bags falling under the "other made up articles" category. Or, for example, plastic combs, for which the correct classification was 9615, which had been stated correctly in the exporting country, with it however having been classified as articles of plastic under 3926 in the importing country. One was talking about valuation issues, covering cases such as a situation where a value had been declared as $100 in the exporting country, with the Indian importer however referring to $75 instead.

21. The exchange of information was not something where the disclosure would lead to something. One should not forget that one was talking about illegitimate trade. The basic philosophy of all Agreements and existing WTO instruments to facilitate trade was that the goods originating from different countries competed with one another on the basis of equal footing and pure competitive advantage. There was no scope for any wilful fraud, offences or suppressing of information.

22. It was recognized that this exchange of information might adversely affect the interest of a particular enterprise. But while it might promote a private interest by giving wrong information, it created a clear competitive disadvantage for another country. This was not fair competition.

23. Initially, the text had stated that the information was required to be disclosed in judicial proceedings, because India felt that no harm would be caused by disclosing it in judicial proceedings which was also provided for in other WTO instruments. Nevertheless, taking into account Members' concerns, the paragraph had been changed to now state that the information would not be disclosed in criminal proceedings, unless the requested Member agreed to do so.

24. On the issue of the alleged burdensomeness of the proposal, paragraphs 1, 2, 3 and 4 of the text contained a number of changes to accommodate Members' concerns that requests would not be made in a routine or frivolous manner. For instance, regarding paragraph 2, the EC had called for such requests to be made after the domestic channels of investigation had been exhausted. Paragraph 10 stated that the requesting country had to make an internal verification. Only then could it ask for the information.

25. In paragraph 4, the original formulation had stated that the information and the documents exchange shall be authenticated by the requested Member. It had never been India's intention that this was to be authenticated by the requested Member. Rather, the idea had been for the information to be exchanged only to be certified as true copies of the documents. But again, as a result of Members' concerns, the word "certify" had been replaced by the word "confirm".

26. Australia had suggested that Members would not be requested to modify the import/export procedures. As a result, paragraph 5(a) had been adjusted. Basically, the text stated that Members were not required to ask for additional documents/information from the importer or exporter. They did not have to modify their existing procedures, import declarations/export declarations, and did not have to introduce paper documentation where there had been none. Rather, the proposal merely called for information, which was available, to be supplied.

27. This information was not secret information. It was already available in the importing country. The identical information was available at both ends of the transaction. What the proposal talked about was that this information, which was in the public domain, information that the importer/ exporter had filed, be supplied to the requesting Member.

28. India had tried to accommodate delegations' concerns. Each of the paragraphs had been modified to take them into account to the extent possible. For instance, regarding paragraph 7, Japan had been saying that in their administration, the exchange of information was done through the Ministry of External Affairs, not through customs. As a result, "customs" had been deleted before "administration".

29. In paragraph 8, a number of delegations such as Brazil, Morocco, the African Group and Japan had said that this information should be provided in a mutually acceptable language. Therefore, the paragraph had been amended to provide that it would either be a WTO language or another language that was mutually acceptable. That should enable, for instance, Brazil to exchange information with Mozambique in Portuguese.

30. In paragraph 10, the EC had requested for there to be a cap on the number of requests. In response, the number of requests had been put in square brackets in order for that to be discussed.

31. All of these paragraphs had been amended since the proposal had been submitted in July 2006. Still, this was not the end of the story and India was willing to negotiate further.

32. The representative of the European Communities introduced proposal TN/TF/W/109/Rev.1, informing that it was equally sponsored by Mongolia.

33. In updating the earlier version of the proposal, the sponsors had tried to take previous discussions into account as well as Members' suggestions. The EC had tried to restructure it slightly in terms of its presentation and readability, particularly in respect to the substance. They had tried to be more clear and to spell out in more detail the real benefits of the proposal.

34. In terms of new elements, paragraph 1 now contained an additional section, consisting of the phrase "In addition to the facilitation measures provided to all operators set out in this Agreement". Further simplification was then made possible for a specific class of operators which met certain criteria related to compliance with customs requirements, the so-called "authorized traders".

35. What had effectively remained the same were the specific criteria that each party would have to meet. The only small change in that context was that the text now referred to having an appropriate record of compliance with "customs requirements" instead of "import and export requirements".

36. With respect to the actual facilitations as such, they had to be a key part of the proposal. The relevant language had been cleaned up, listing the individual elements more precisely. For example, the original text had just talked about facilitations with respect to declarations, duty payments, documentation, documentation inspections and data. The revision was more precise, saying that there would be additional facilitation measures that would include things such as the possibility of periodic declarations and payment of duties. That was a clarification that would enhance facilitation.

37. The language about reduced physical inspections had also been modified slightly. An additional key facilitation had been created by referring to the right to have reduced documents and data requirements subject to domestic law. This could be manifested through, for example, a single declaration for an entire consignment.

38. The list of facilitations was not an exhaustive one. The text distinguished between key facilitations that were really crucial and other ones that were highly recommendable and desirable, provided that one had the means to do it and the technology. The revision newly mentioned two additional measures in that context: local and remote filing.

39. The rest of the proposal was effectively the same. Delegates would see from the text that the order of the additional elements had been changed and the language tied up. There was also an open reference to international standards. It had been considered unnecessary to make a precise reference to just one. The sponsors had wanted this to be more accessible through the existing and developing international standards.

40. Those were the main points the sponsors hoped to achieve with the revision. The EC would be glad to hear comments and questions which would be taken into account the way previous feedback had been reflected.

41. The representative of the European Communities presented proposal TN/TF/W/110/Rev.1, informing that is was co-sponsored by Mongolia, Chinese Taipei and Switzerland.

42. The revised text on customs brokers was a refocused proposal in that it moved the emphasis from the gradual elimination of customs brokers to disciplining rules applicable to customs brokers. It was the result of the Swiss intervention in an earlier meeting of the Negotiating Group and the bilateral contacts the EC had had with the interested parties.

43. The first three paragraphs of the proposal set out the disciplines the sponsors wished to see applied to licensing procedures on customs brokers. They should be transparent and proportionate. Everybody who met these transparent and proportionate rules should be allowed to have a license.

44. The fourth paragraph was a standstill provision. It was proposed that, from the entry into force of the commitment, Members did not introduce or apply any requirements to use customs brokers. It was important to clarify that this proposal was not about services. It was not about the freedom of providing a customs broker service to non-nationals. Rather, it was something to facilitate trade that met a valid business concern. This was contained in paragraph 2 of the proposal where it was stipulated that companies, legal persons were allowed to operate in-house customs brokers. Those customs brokers would still be licensed by the relevant national authority but they would work for the specific company, operating under its payroll. The EC would be pleased to address any further concerns Members might have about the proposal.

45. The representative of Uganda introduced document TN/TF/W/156 by Uganda and the United States.

46. In a joint communication, TN/TF/W/104 of 10 May 2006, Uganda and the Unites States had submitted a textual proposal stating that "a Member shall not require a consular transaction, including any related fee or charge, in connection with the importation of any good". Joint submissions had been made earlier, proposing elements of a commitment of this nature (TN/TF/W/22 of 21 March 2005 and TN/TF/W/86 of 4 April 2006).

47. The communication TN/TF/W/156 detailed the history of costs and burdens as well as the lack of transparency in the procedures applied in processing consularization requirements. In light of the Negotiating Group's efforts to have a more focused discussion of Members' proposals and to advance Members' understanding of the consularization proposal, Uganda and the US were providing Members with additional information on the costs and burdens associated with consularization requirements as well as the historical efforts to eliminate consularization.

48. The utility of consularization requirements had long been questioned. In the view of the costs and burdens related to these requirements, there had been a long history of efforts to eliminate them, going back at least to 1923. Since 1948, elimination of consularization had been a persistent theme under the GATT and later the WTO.

49. The GATT CONTRACTING PARTIES recommended the elimination of consularization requirements in decisions between 1952 and 1962 that remained in effect in the WTO. In the modern trading system, consularization requirements were clearly obsolete. The fees and delays associated with consularization requirements had had an inordinate impact on exporters from developing country Members and, more particularly, least-developed and landlocked countries, such as Uganda.

50. The processing of papers was not only cumbersome but expensive as exporters often had to travel long distances to have their documents stamped. And for stamping these documents, there was no specific skill or scientific knowledge required. Normally, they were deposited at the reception or at the security where they were stamped and traders had to pay without any expert advice.

51. For small- and medium-sized enterprises, consularization requirements represented a burden to market access. Furthermore, consularization requirements served no discernable legitimate customs-related function, for a small exporter had to pay between $125 - 200 upfront, even when the assignment might be less than $1,000.

52. Eliminating consularization requirements would result in cost savings for traders and administrators alike, and would remove a practice that continued to prevent traders in developing countries and LDCs from enjoying the maximum benefits from the WTO Agreements and the results of the Doha Round negotiations (including the Trade Facilitation negotiations). It would also achieve a long-standing goal of the GATT CONTRACTING PARTIES and WTO Members.

53. The representative of the United States co-introduced TN/TF/W/156, saying that the document had been submitted in an effort to further elaborate on the costs and burdens associated with consularization requirements and to set forth in more detail the long history of efforts to eliminate these requirements. Those details were set forth on pages 3 and 4 of TN/TF/W/156. The case for the elimination of consularization requirements was clear. The US appreciated the many expressions of support from Members on proposal TN/TF/W/104.

54. As noted in TN/TF/W/156 on pages 3 and 4, the CONTRACTING PARTIES had recommended the elimination of consularization requirements and decisions between 1952 and 1962 that remained in effect to the present day.

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

56. The plenary was adjourned.

57. Upon resumption of the plenary meeting, the discussions continued in informal mode with the exception of the following items:

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

58. 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.

59. It was so agreed.

C. OTHER BUSINESS

60. The Chairman addressed the issue of the Group's next meeting, suggesting to hold it in mid-September. Details on the timing and the agenda would be communicated at a later stage.

61. It was so agreed.

62. The representative of the European Communities requested that the structure of the next meeting allow Members to address the remaining parts of the GATT Article VIII proposals and the GATT Article V proposals early in the negotiating week. Only once that had been done should the NG revert to the Article X proposals and to other issues. That would provide a fair opportunity for the less-discussed subjects to be thoroughly explored.

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

64. The meeting was adjourned.