

Negotiating Group on Trade Facilitation

MINUTES OF THE MEETING

Held in the Centre William Rappard
from 4- 8 October 2010

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

1. The Chairman recalled that the agenda for the session had been circulated in WTO/AIR/3615.
2. As Members would have noticed from the airgram, the meeting focused on three main areas of work. The first related to new submissions from the membership. They would be addressed right after the end of the opening plenary. Once this had been completed, delegations would be invited to move into the GATT Article VIII area to continue the negotiations from where they had been left in July. This would be followed by work on special and differential treatment as a third key item on the agenda.
3. Time would also be accorded to Members' bilateral, plurilateral and open-ended activities, as had been requested. The afternoons of the first three days had been reserved to this end. Delegations wishing to organize such initiatives would be expected to report on their results in the closing plenary. After that, the Negotiating Group would take up the traditional technical assistance and needs assessment items.
4. The agenda was adopted.
- A. WORK ON THE DRAFT CONSOLIDATED NEGOTIATING TEXT
5. This part of the meeting was conducted in informal mode with the exception of the following presentation:
 6. The representative of Israel introduced JOB/TF/10, explaining the textual suggestions it contained. Some of them were self evident, which was the reason for limiting the current intervention to the language proposed for Article 10, section 10.1, and Article 12, paragraph XVI of the Draft Consolidated Negotiating Text.
 7. With respect to Article 10, section 10.1, Israel proposed the insertion of the following text: "[In cases where goods are proven to be in violation of intellectual Property Rights, the good will be handled in accordance to the TRIPS Agreement (including destruction of the goods, where appropriate).]". The reason for this provision was that the current text would create a new obligation for customs administrations. Complying with the proposed language would imply a *de jure* modification of legal obligations derived from the TRIPS Agreement, namely from its Article 46 which stated: "In order to create an effective deterrent to infringement, the judicial authorities shall have the authority to order that goods that they have found to be infringing be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the right holder, or, unless this would be contrary to existing constitutional requirements, destroyed."

8. As one could see, the authority of customs to order the destruction of goods infringing intellectual property rights already existed. It would not be created through the Agreement on Trade Facilitation by adding the proposed language. Rather, it already existed under the TRIPS Agreement and was being enforced by most customs administrations around the world.

9. On the other hand, the proposed Article 10.1 created an obligation to grant an unqualified "option to return goods". In cases where the rejection was based on a proven violation of the TRIPS Agreement, granting such an option to return the rejected goods would in fact mean that the future Agreement on Trade Facilitation would overrule the language of Article 46 of the TRIPS Agreement. Since Israel paid great importance to the legitimate fight against counterfeiting, providing such an option was not acceptable and would affect the way customs currently administered and enforced the TRIPS Agreement. This was why Israel believed that a specific reference to the TRIPS Agreement should be inserted in Article 10, paragraph 10.1, of the Draft Consolidated Negotiating Text.

10. Perhaps discussing a more general exception to the obligation derived from the proposed language in Article 10 could also be appropriate, as long as the resulting language assured that this provision of the Trade Facilitation Agreement did not affect the obligations created by previous international agreements, including the TRIPS Agreement.

11. With respect to Article 12, paragraph XVI, Israel proposed the inclusion of the following language: "[or would violate a commercial, industrial or professional secret]." Paragraph XVI would read as follows: "[In cases where the requested Member is of the opinion that exchange of information under these provisions is prohibited by its laws and regulations or would infringe upon its sovereignty, security, public policy, or other substantial interest, *[or would violate a commercial, industrial or professional secret]*, the request may be refused or has to be withheld, or may be subject to the satisfaction of certain conditions or requirements.]"

12. Although the concept of "other substantial interest" was broad and vague and seemingly could encompass many things, Israel would like to see this text inserted in this paragraph since - due to its importance and relevance - the protection of commercial, industrial and professional confidentiality merited an explicit mention within the text.

13. Israel was more than happy to further discuss those ideas both multilaterally and bilaterally with interested delegations.

14. 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

15. 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.

16. It was so agreed.

C. OTHER BUSINESS

17. The Chairman addressed the issue of the Negotiating Group's next meeting, suggesting to hold it from 29 November – 3 December. Details regarding its content and structure would be communicated to Members in due course.

18. It was so agreed.
 19. The Negotiating Group took note of the statements made.
 20. The meeting was adjourned.
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