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ORGANIZATIONAL MATTERS

Negotiating group on Trade Facilitation (NGTF) at the WTO

Note by the secretariat

I. Trade Facilitation in the Doha Agenda work programme

1. At the WTO Singapore Ministerial Conference in 1996, WTO member states agreed to assess the scope for negotiations at the WTO on four new topics; notably trade and investment, transparency in government procurement, trade and competition and simplification of trade procedures. Trade facilitation thus became part of the so-called “Singapore issues”.

2. Based on §21 of the Singapore Declaration, the Council on Goods undertook exploratory work on various aspects of trade facilitation, such as import and export procedures and requirements, physical movement of consignments, electronic facilities for facilitating international trade, and existing international legal instruments, and work undertaken by inter-governmental organizations. As a result, in the Doha Declaration of November 2001, WTO members directed the Council of Trade in Goods to start negotiations with the aim to “[...] review, and as appropriate, clarify and improve Articles V, VIII and X of GATT 1994 and identify the trade facilitation needs and priorities of Members [...]”. Article VIII and X of GATT 1994 contain provisions on fees and formalities connected with importation and exportation and the publication and administration of trade regulations while Article V of GATT 1994 deals with

freedom of transit.

3. However, soon after the Doha Ministerial meeting, disagreement over the content of the entire Doha work programme led to a standstill in the negotiations, and WTO members failed to reach an agreement on the completion of the Doha work programme at the Cancun Ministerial Conference in 2003. The Cancun meeting was marked by discord on agricultural issues, including cotton, and on the “Singapore issues”.¹ It was only in August 2004 that WTO members reached consensus on the Doha Round of negotiations and adopted on 1 August 2004 the text of the “General Council’s decision on the Doha Agenda work programme”, so-called “July 2004 package”.²

4. From the “Singapore issues,” only Trade Facilitation remained on the agenda of negotiations.

II The Negotiating Group on Trade Facilitation (NGTF)

5. Annex D³ of the July Package specifies the modalities for negotiations on trade facilitation and directed the General Council to set up a Negotiating Group on Trade Facilitation. According to Annex D of the July Package the negotiations on trade facilitation should “*aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit.*” The negotiations should also aim at “*enhancing technical assistance and support for capacity building in this area*”, and at developing “*provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues*”.

6. The modalities text clearly shows the balance struck by WTO member states between the objective to set new uniform rules in the area of trade facilitation and fair recognition of the different stages of development and implementation capacity of countries. Annex D therefore states that the outcome of the negotiation “*shall take fully into account the principle of special and differential treatment for developing and least-developed countries*” and that developing and least-developed countries “*would not be obliged to undertake investments in infrastructure projects beyond their means*”. The importance of technical assistance and capacity building during the negotiations and for the implementation of the new commitments is also anchored in the Annex D and developed countries committed to adequately ensure such support and assistance.

7. The text of the Annex D further invites international organizations, including the IMF, OECD, UNCTAD, WCO and the World Bank, hereafter called Annex D organizations, to undertake a collaborative effort in order to make technical assistance and capacity building more effective and operational and to ensure better coherence.

III Negotiations at the NGTF

8. The first meeting of the Negotiation Group on Trade Facilitation (NGTF) took place on

² http://www.wto.org/english/tratop_e/dda_e/draft_text_gc_dg_31july04_e.htm

³ http://www.wto.org/english/tratop_e/dda_e/draft_text_gc_dg_31july04_e.htm#annexd

12 October 2004. In successive rounds of formal and informal meetings WTO members put forward written submissions for the revision of the Articles V, VIII, and X of GATT 1994, and for the establishment of an implementation mechanism taking fully into account the modalities of the Annex D. Discussions have also been taken place on the issue of enhancing technical assistance and capacity building in the area of trade facilitation.

Over 130 proposals have been submitted to date and work over the last year has focused on consolidating and converting these into text-based proposals that could be used in a possible future WTO agreement on trade facilitation. Following this consolidation exercise, there are now just over 30 text-based proposals in the latest version of the WTO secretariat's Compilation of Members Proposals.⁴ These include, inter alia, the following topics:

- (a) Publication and notification of trade regulations, including Internet publication, and the establishment of national enquiry points;
- (b) Interval between publication and entry into force;
- (c) Prior consultation;
- (d) Advance rulings;
- (e) Right of appeal;
- (f) Specific parameters for fees and charges, their publication and notification, and periodic review;
- (g) Periodic review of formalities and documentation requirements, aiming at their reduction;
- (h) Single window;
- (i) Coordination of activities and requirements of all border agencies;
- (j) Expedited shipments;
- (k) Pre-arrival processing, post- clearance audit, as well as the separation of release from clearance procedures;
- (l) Risk management and Authorized Traders;
- (m) Promotion of regional transit arrangements;
- (n) Bonded transport regimes and guarantees;
- (o) International, regional or national Customs guarantee system.

9. Discussions related to the implementation mechanism focus on special and differential treatment (SDT) provisions which go beyond the granting of transitional periods by effectively linking countries' commitments to the implementation capacities and, furthermore, the acquisition of implementation capacities to the adequate provision of technical assistance and

⁴ WTO Negotiations on Trade Facilitation - Compilation of Members' Textual Proposals (TN/TF/W/43/Rev.14, 12 March 2008)

capacity building.

Aiming at full implementation of the newly negotiated set of commitments, current proposals on SDT provisions indicate that developing countries would be allowed to separate the commitments into distinct categories, including measures that can be implemented immediately, measures that require additional time to implement, and measures that require both time and TA and CB. Individual countries would likely be required to notify WTO member countries regarding which measures, from a national perspective, fall into which category, and indicate the additional time and extent of TA and CB required. Such a notification requirement would lead developing countries to undertake an assessment of their implementation capacities compared to the new rules, in a given timeframe upon signature of the agreement and, if requested, with the support of technical assistance.

IV Needs Assessments

10. At this stage of the negotiations, developing country members aim to have a better understanding of the possible impact of the proposed new rules before signing any possible future agreement. In order to assist countries with the assessment of their current situation regarding the proposals, the World Bank developed a self-assessment methodology, which has been further refined by the WTO Secretariat and the other Annex D organizations. The analytical tool allows members to compare the national legal and institutional framework and current practices with the requirements of the proposals, and leads to the identification of existing gaps as well as actions, including technical assistance and capacity building needs, to address them.

11. The WTO Secretariat has embarked on an extensive program to facilitate the use of the methodology by members in national self assessment workshops. Together with the other Annex D organizations, UNCTAD provides facilitators to assist in undertaking these workshops.

12. UNCTAD complements this activity through the provision of advance workshops and seminars to help developing and least developed countries to prepare for and obtain maximum benefit from the self assessment workshops. This is driven by the belief that these needs assessments do not only have a beneficial impact on the participation in the negotiations, but could also serve as nuclei for the more detailed assessment which will become necessary upon signature of the future agreement in view of the notification for the SDT provisions. Feedback from recipient countries on UNCTAD's preparatory assistance has been very positive and it will continue to be a key feature of UNCTAD's support to developing and least developed countries in the current stage of WTO trade fac.
