

COMMUNICATION FROM AUSTRALIA AND MALAYSIA

The following communication, dated 18 March 2005, is being circulated at the request of Australia and Malaysia.

**APEC WORKSHOP ON THE WTO TRADE FACILITATION NEGOTIATIONS
SUMMARY REPORT**

1. The Governments of Australia and Malaysia jointly hosted a workshop for APEC economies on the WTO trade facilitation negotiations, 1-2 March 2005 in Kuala Lumpur. Over 70 customs, trade and business representatives from 13 Asia-Pacific economies¹ attended the workshop, which was facilitated by Mr. Andrew Stoler, Executive Director of the Institute of International Business, Economics and Law at the University of Adelaide and current Director of the private sector Trade Facilitation Alliance. Distinguished guest speakers included H.E. Ambassador Noor Muhamad Yacob, Chairman of the WTO Negotiating Group on Trade Facilitation.

2. Coinciding with the start of substantive negotiations, the workshop aimed to improve understanding among APEC trade and customs officials of issues involved in the WTO trade facilitation negotiations; to draw lessons from the APEC experience of trade facilitation relevant to the WTO negotiations; and to strengthen the capacity of APEC economies to participate effectively in the WTO negotiations. The workshop consisted of ten separate sessions, including a final panel session that discussed lessons for the WTO negotiations. Other sessions addressed the outlook for trade facilitation negotiations in the Doha Round; preparatory work to date in the WTO; views of leading proponents on issues for inclusion in the negotiations; the treatment of trade facilitation in recent free trade agreements; international customs reform efforts, including the APEC Kyoto Pathfinder initiative; the experience of selected APEC economies in implementing trade facilitation reforms; and business perspectives on the negotiations.

3. Overall, there was a sense among workshop participants of the value in building on current GATT rules. The APEC experience demonstrated that rules were necessary to shore up political commitment to customs reform and to prevent "backsliding" by administrations, as well as to ensure stable and predictable conditions for trade. Among the issues raised in discussions, the following emerged as key lessons for the negotiations:

- There was an ongoing need for confidence-building in the Negotiating Group's work. Consequently, it made sense to address the "easier" issues in the initial stages of negotiations, in order to build on small blocks of success as WTO Members worked toward a

¹ Australia; People's Republic of China; Hong Kong, China; Indonesia; Japan; Malaysia; the Republic of the Philippines; the Russian Federation; Thailand; Chinese Taipei; Viet Nam; Cambodia; United States.

comprehensive final result. The "bite-sized" approach was helpful in framing discrete, "digestible" proposals.

- There was a need to focus on technical assistance and to seek input from those developing countries in need of assistance to specify where they needed help, not just in implementation but also – very importantly – in the course of the negotiations themselves. There was no shortage of resources for technical assistance and capacity building, but greater coordination and focus was needed in the delivery.
- It would be essential to develop tailored implementation plans, as needed, with respect to the various commitments based on analyses of individual Members' situations over the course of the negotiations.
- Geneva-based negotiators needed real-time access to technical analysis and advice from customs experts in order to assess proposals and respond effectively to developments in the negotiations. Better internal coordination would be a critical factor for successful negotiations: between trade and customs authorities, between Geneva-based negotiators and capitals, and between government and the private sector.

4. A summary report of the workshop proceedings is attached for the information of Members. Workshop presentations can be viewed on the APEC website (www.apec.org).

APEC Workshop on WTO Trade Facilitation Negotiations
March 1-2, 2005, Kuala Lumpur, Malaysia

Report on Workshop Proceedings and Outcomes

Summary

The APEC Workshop on WTO Trade Facilitation Negotiations was held in Kuala Lumpur, Malaysia on 1-2 March 2005, co-hosted by the Malaysian Ministry of International Trade and Industry and the Australian Department of Foreign Affairs and Trade. The Workshop was attended by more than 70 participants from 13 economies.¹ Participants were drawn from member economies' customs administrations, agencies responsible for trade policy and from representatives of the business community. The Chair of the WTO Negotiating Group on Trade Facilitation, H.E. Ambassador Muhamad Noor Yacob participated in the Workshop that was facilitated by Mr Andrew Stoler, Executive Director of the Institute for International Business, Economics and Law at the University of Adelaide. Mr Stoler is a former Deputy Director-General of the World Trade Organization and current Director of the private sector Trade Facilitation Alliance.

The objectives of the Workshop were: (1) to improve understanding among APEC trade and customs officials of issues involved in the WTO trade facilitation negotiations; (2) to draw lessons from the positive APEC experience of trade facilitation relevant to the WTO negotiations; and, (3) to strengthen the capacity of APEC economies to participate effectively in the WTO negotiations.

The Workshop consisted of ten separate sessions, including a final panel session that discussed lessons for the WTO negotiations. Other sessions were addressed to: (1) prospects for trade facilitation negotiations in the Doha Round; (2) a survey of preparatory work to date in the WTO; (3) views of the EC and the USA on issues for inclusion in the negotiations; (4) the treatment of trade facilitation in recent Free Trade Agreements; (5) APEC's trade facilitation agenda, including the Kyoto Pathfinder initiative; (6) Chinese Taipei's experience with trade facilitation; (7) Malaysia's experience with trade facilitation; (8) a developed country (USA) business perspective on trade facilitation; and, (9) a developing country (Philippines) business perspective on trade facilitation.

The program for the Workshop and the list of participants are attached as Annexes I and II.

WTO Trade Facilitation Negotiations

Following introductory comments by representatives of the sponsoring APEC economies, the presentations and discussion on the first day of the Workshop focussed on the background to and recent developments in the WTO trade facilitation negotiations. The Chair of the WTO Negotiating Group, Ambassador Muhamad Noor Yacob, reviewed the mandate of the negotiations as set out in Annex D to the Framework package agreed by WTO Members in July, 2004. The Chairman pointed out the evolution of the text of the mandate from earlier versions and the very important fact that in addition to clarifying and improving GATT Articles V, VIII and X, WTO Members had agreed that other objectives of the negotiations included effective technical assistance and capacity building in developing countries and enhanced cooperation and coordination among customs and other agencies with responsibilities related to the import and export process. The Chairman described the progressive approach being followed in the negotiating group and the need to move at a pace that allowed developing countries to gain confidence in the negotiations. Concerns, particularly, those raised by least developed countries, needed to be addressed, he said, and it was his objective to keep those concerns in mind as the talks proceed. The Chairman welcomed the fact that the initial

¹ Australia; People's Republic of China; Hong Kong, China; Indonesia; Japan; Malaysia; the Republic of the Philippines; the Russian Federation; Thailand; Chinese Taipei; Viet Nam; Cambodia; United States.

proposals tabled in advance of the February meeting of the negotiating group were “bite sized” and digestible by participants. The objective in the negotiating group is to make sufficient progress by the end-July break in Geneva to ensure that a comprehensive package of proposed improvements and clarifications could be on the table for the upcoming WTO Ministerial Conference in Hong Kong.

In response to participants’ questions and comments, the Chairman pointed out that other organisations such as the World Bank and the World Customs Organisation were involved in the work of the Negotiating Group – in particular with respect to technical assistance. The WCO, in particular, was an active participant in the work of the Group. The Chairman observed that to date no delegation has made a targeted proposal in respect of technical assistance or in relation to Article V.

The existing legal framework in the GATT, the relationship of Articles V, VIII and X to other agreements within the WTO system and preparations to date in the negotiations were reviewed by Mr Stoler in the second presentation of the workshop. The nature of existing legal obligations and the shortcomings that many delegations had identified with these provisions were explained and the presenter detailed how many of the “gaps” and unclear obligations would be addressed in proposals tabled to date in both the preparatory period and in newer proposals tabled in advance of the February meeting of the Negotiating Group.

Recognizing that the European Communities and the United States are among the most vocal advocates for negotiated clarifications and improvements to the “trade facilitation articles”, representatives of the EC and the US addressed the workshop on their delegations’ views on desired outcomes to the negotiation. Speaking for the EC, Mr Joachim Graminsky of the European Communities’ Geneva delegation, said that Brussels endorsed Annex D fully and was convinced that there is still too much “red tape” and lack of clarity in rules and procedures that have not been revisited in decades. He explained that the EC’s recent proposal with respect to Article X was designed to tackle the easier issues first and build confidence in the negotiations. In his presentation, he reviewed and explained proposals tabled in respect of publication and advance binding rulings; consultation with the trading community in advance of finalising new regulations and procedures; and, the desirability of ensuring appropriate administrative and judicial appeal procedures. He briefly forecast forthcoming proposals from the EC in respect of GATT Articles VIII and V.

Ms. Rachel Shub of the United States Mission to the WTO said that recently tabled US proposals reflected the feeling that traders needed more specificity in the rules to keep pace with developments in global logistical practices. The United States recognized that many delegations felt the need for technical assistance in the negotiations and she believed that the resources existed to satisfy these needs; however, this should not be an overly complex negotiation. She reviewed the four discrete proposals tabled by the US on transparency (including internet publication), advance binding rulings, information on fees, and the need for particular provisions dealing with express shipments. In the US view, negotiations based on abstractions were unlikely to provide real results and risked raising concerns in developing countries. For this reason, her delegation would focus its efforts on simple, practical proposals like those already on the table.

On the issue of special and differential treatment, Ms Shub said the US did not consider it helpful to suggest that developing and least-developed countries should be exempted from trade facilitation commitments particularly since it appeared that developing countries generally recognized the benefits of undertaking reforms if they had the capacity to do so. As needed, it would be essential to develop tailored implementation plans with respect to the various commitments based on analyses of individual Members’ situations over the course of the negotiations.

In the final session of the Workshop’s first day, Mr Stoler and Ms Shub reviewed how trade facilitation concepts under discussion in Geneva were already finding their way into recently negotiated and implemented bilateral Free Trade Agreements (FTAs), such as the FTAs negotiated between Australia and Singapore, Australia and the USA and US FTAs with Chile and Central

American countries. Many of these FTAs incorporated provisions on enquiry points, advance rulings, internet-based publication and administrative and judicial appeals procedures. In the course of the discussion that followed, the presenters explained how these FTAs, many of which included the participation of developing countries, served as useful practical “test beds” for concepts under discussion at the WTO. In addition, it was pointed out that technical assistance and special and differential transitional features had also been important elements in these bilateral and regional initiatives.

APEC Members’ Trade Facilitation Experiences

Dr David Widdowson, Chief Executive Officer of the Centre for Customs and Excise Studies at the University of Canberra focussed his remarks on the key role played in trade facilitation of effective risk management techniques and procedures. He explained Revised Kyoto Convention provisions on risk management and how economies taking the right approach in this area are able to both increase regulatory control and enhance trade facilitation. Key elements of an approach advocated by the Kyoto Convention contributing to effective trade facilitation include: clear legal requirements, appropriate application of laws, minimal red tape, coordination among agencies involved with border clearance activities, effective compliance management that provided for post-transaction audit and broke the nexus between physical control and revenue collection, and, effective use of automated systems. Dr. Widdowson reviewed the APEC Kyoto Pathfinder Initiative that laid out the steps economies should follow in order to come into compliance with the revised Kyoto Convention and explained how the World Bank was undertaking a trade facilitation support project.

The experience of Chinese Taipei with trade facilitation initiatives was detailed by Dr. William Wang of the Customs Service of Chinese Taipei. He explained that key players in the success or failure of trade facilitation initiatives included not just customs administration personnel but also those in licensing agencies and private sector players like carriers, warehouse operators and banks. Automation was a necessary foundation for implementation of many trade facilitation techniques and contributed to effective risk management and the introduction of post-transaction audit procedures. He emphasized the importance of narrowing the focus by creating more inquiring and analytical tools in order to sort out high-risk group and let the legitimate commerce pass the customs unimpeded. Dr. Wang also detailed Chinese Taipei custom’s trade facilitation measures including single window operations, cargo clearance transparency, immediate Q&A problem-solving mechanism, container movement transparency, etc. As a way of measuring its progress in trade facilitation, Chinese Taipei has developed and put into use trade facilitation indicators, such as release time measurement, the percentage of by-passed entries, and cargo examination rates.

Royal Malaysian Customs’ experiences with trade facilitation were detailed by Mr Dhajudeen Sahol Hameed, Deputy Director of Customs. International trade was accepted as critically important to the long term prosperity of Malaysia and for this reason, Malaysian Customs was committed to undertaking trade facilitation measures itself and seeking their introduction by Malaysia’s trading partners. Of particular significance was Malaysia’s shift from transaction-based controls to post transaction audit controls. He described how Malaysia saw the interaction of GATT Articles like Article VIII with the revised Kyoto Convention’s standards and suggested that it would be important to use the WTO negotiations to build these standards into the WTO rules. In a very significant development, Malaysia and Thailand were working jointly to develop shared customs control on their borders, including the use of joint documentation. Malaysia’s risk management techniques involved authorised trader arrangements recognised as “Customs Golden Clients”. Malaysia was actively working to coordinate the activities of the various agencies involved in border control and planned introduction of a “single window” import and export operation.

Mr Jim Clawson, the Chairperson of the United States International Trade Advisory Committee for Customs and Trade Facilitation, provided the Workshop with the developed country business view of trade facilitation negotiations at the WTO. He emphasized the key role to be played by the private

sector both in advising government on trade facilitation initiatives and also in mobilizing support for implementation of trade facilitation techniques. As an approach to progressing this area, he suggested focus on: (a) improving the efficiency of capacity building efforts and avoiding waste and duplication by implementing better co-ordination between governments, donor agencies, and recipient countries; (b) eliminating the piecemeal approach to capacity building that has prevailed in the past; and (c) adopting a coherent approach to capacity building through governmental negotiations and an elaboration of the GATT Articles which ensured that modernization programs are based on agreed best practices, designed to suit the specific needs of individual recipient countries and are not short term stopgap measures. Mr Clawson noted that abundant resources were available for technical assistance and capacity building, including from donors, international organizations and the private sector. He drew attention to the important work being undertaken by the Global Facilitation Partnership managed by the World Bank in coordination with the WCO as a way of bringing together business, government and international organizations in a way that could contribute to meaningful technical assistance to developing countries.

The final presentation prior to the Panel Discussion was made by Ambassador Donald Dee, Trustee for the Textiles Sector in PhilExport and President of the Philippine Chamber of Commerce and Industry who spoke on the developing country business perspective on trade facilitation. He explained that for Philippine traders, problems with trade and customs regulations ranked second after corruption as problems for business. PhilExport and others working through the Export Development Council of the Philippines were working to review systems and procedures to simplify customs clearance and operated an automated export data system and common bonded warehouse. The Chamber of Commerce and Industry contributed to trade facilitation initiatives through the operation of an electronic data interchange (EDI) gateway that related to the Philippines "super green lane" initiative. Outstanding issues highlighted by Ambassador Dee included: (1) funding trade facilitation (he pointed out that the government had recently embarked on a program of modernising Customs' IT system), (2) backsliding on policy – where efforts to roll back to the number of signatures required to approve transactions had been reversed due to a lack of binding rules and the temptation to provide avenues for corruption; and (3) inadequate government interagency coordination. He cited this last point as a particularly serious issue in the Philippines. In terms of lessons to be learned, Ambassador Dee said business interested in trade facilitation needed to: (1) persevere and stay focussed; (2) share resources in pursuit of common goals; (3) benchmark best practices such as the exciting Malaysia-Thailand initiative described by the Deputy Director of Royal Malaysian Customs; and (4) communicate, network and lobby for change.

Panel Discussion and Conclusions on Lessons for the Negotiations

The Workshop was wrapped up with a panel discussion moderated by Mr Stoler with the participation of Ambassador Muhamad Noor Yacob, Mr Graminsky, Mr Clawson and Ambassador Dee.

Mr Graminsky opined that the Workshop had demonstrated to him that there was a strong case for a rules-based approach to trade facilitation in the WTO, not least because of the point made by Ambassador Dee regarding the potential for backsliding where rules were not the basis for trade facilitation initiatives. He said he felt lessons learned included: (a) the need to involve Customs authorities in the negotiations, (b) the fact that transparency was an indispensable tool in fighting corruption, (c) there was an obvious need for improved internal coordination and coordination between capitals and their Geneva representatives, and (d) a strong argument in favour of closer coordination of donor activities in the field of trade-related capacity building.

Ambassador Dee said that in his view the main lesson from the two-day workshop was that trade facilitation to be effective had to be rules-based. It was obvious to him that existing rules were too broad and not specific enough to be useful. Finally the kind of interagency and private/public sector coordination problems that were so serious in the Philippines are obviously an issue internationally as well and could best be tackled by the right outcome to the WTO negotiation.

Mr Clawson said the Workshop had validated his view that many economies, including developing countries, were already implementing many of the techniques and procedures under discussion in Geneva, including key risk management principles. It was also clear that only an effective public-private partnership where all stakeholders were involved in the negotiations and their implementation would likely produce results that would be effective in facilitating trade. He noted that the launch of WTO negotiations had raised the profile of customs issues beyond the narrow customs sphere. In this context, he hoped the workshop would encourage dialogue between customs experts, trade negotiators and business.

The Chairman of the Trade Facilitation Negotiating Group, Ambassador Noor Yacob, said he agreed with most of the observations made by other panel members. On the basis of the discussion in the workshop it seemed that in some cases there could be important communication gaps between capitals and their Geneva representatives and that this problem deserved attention. He cautioned that APEC was involved in far more in terms of trade facilitation than was on the table in Geneva where the focus was strictly on Articles V, VIII and X. Finally, he said it was his very strongly held view that we needed to avoid alienating developing countries in the Negotiating Group. This meant that work needed to proceed at a pace that was digestible by all participants and that technical assistance and capacity building mandated in Annex D must be forthcoming, both during the negotiations and in the implementation phase. Panellists acknowledged that resources were available for technical assistance and capacity building, but that more effective coordination was required in the delivery. Assistance would need to be demand-driven and focused on the needs of individual Members.

The facilitator for the Workshop, Mr Stoler, summed up the lessons learned by suggesting that there was general agreement among participants on several points: (a) that there was an ongoing need for confidence-building in the Negotiating Group's work and that it would be important to build on small blocks of success as WTO Members worked toward a final result; (b) that there was a need to focus on technical assistance and to seek input from those developing countries in need of assistance to specify where they needed help, not just in implementation but also – very importantly – in the course of the negotiations themselves; (c) that internal coordination would be a critical factor for successful negotiations, both between domestic agencies and between Geneva-based delegations and capitals and, (d) that overall, there was a sense among workshop participants of the value in building on current GATT rules with a rules-based Doha Round agreement. In respect of this last – and key – point, there are a number of reasons that had been cited in support of a rules-based outcome including the value of rules in avoiding backsliding, the fact that the existing GATT provisions in Articles V, VIII and X were already legally-binding (if insufficient) rules, and the fact that the entire WTO and GATT trading regime had been built on the need for traders to operate in a stable and predictable environment and this would only be possible where the rules were legally binding on Members.

Annexes

- Annex 1: Program
- Annex 2: Participant list

APEC Workshop on the WTO Trade Facilitation Negotiations
1-2 March 2005
Renaissance Hotel, Kuala Lumpur

PROGRAM

TUESDAY, 1 MARCH

08:30 Registration

Ballroom B, Ground floor, Renaissance Convention Centre

09:00 Introduction to the Workshop

Mr Ooi Say Chuan Deputy Secretary General,
Ministry of International Trade and Industry, Malaysia

Mr. Simon Merrifield Acting High Commissioner
Australian High Commission
Kuala Lumpur, Malaysia

Mr. Andrew Stoler Executive Director
Institute for International Business, Economics & Law
The University of Adelaide

09:30 Session One: Trade Facilitation in the Doha Round – State of Play

Why is Trade Facilitation on the agenda? What are the terms of the General Council Decision on the Doha Work Program (Annex D)? What is the likely future work program?

H.E. Mr. Muhamad Noor Yacob Ambassador of Malaysia to the WTO
Chairman, Negotiating Group on Trade Facilitation

10:30 Morning Tea

11:00 Session Two: Survey of Preparatory Work to Date Within the WTO

Explanation of GATT Articles V, VIII and X and what they currently cover & how GATT Articles V, VIII and X interact with other WTO Agreements (cross-cutting obligations).

Mr. Andrew Stoler Executive Director
Institute for International Business, Economics & Law
The University of Adelaide

12:30 Lunch hosted by Dato Mohd Sidek Hassan

Secretary-General, Ministry of International Trade and Industry
Arcade 5, Lower Ground Floor

14:00 Session Three: Issues for Inclusion in WTO Negotiations on Trade Facilitation

Part A: European Communities view on possible elements of a WTO Agreement on Trade Facilitation

Mr. Joachim Graminsky EC Permanent Mission to the WTO
Geneva, Switzerland

Part B: United States views on the possible content of an Agreement on Trade Facilitation

Ms. Rachel Shub United States Mission to the WTO
Geneva, Switzerland

15:30 Afternoon Tea

16:00 Session Four: How Trade Facilitation Issues Have Been Addressed in FTAs

Ms. Rachel Shub United States Mission to the WTO
Geneva, Switzerland

Mr. Andrew Stoler Executive Director
Institute for International Business, Economics & Law
The University of Adelaide

WEDNESDAY, 2 MARCH

09:00 Session Five: International Trade Facilitation: the Customs imperative
Implementation initiatives including the revised Kyoto Convention and the APEC Kyoto Pathfinder Initiative

Dr. David Widdowson Chief Executive Officer
Centre for Customs and Excise Studies
The University of Canberra

10:00 Session Six: Case Study – APEC Officials’ Experience in Trade Facilitation

Mr. William Wang Deputy Director of Clearance Operations
Chinese Taipei Customs
Taipei

10:45 Morning Tea

11:15 Session Seven: Case Study – APEC Officials’ Experience in Trade Facilitation
Malaysia’s Experiences with Trade Facilitation

Mr. Dhajudeen Sahol Hameed Deputy Director, Customs Division
Royal Customs of Malaysia

12:00 Lunch Break

Buffet lunch served in Vogue Café, Ground Floor, Renaissance Wing

**13:30 Session Eight: Trade Facilitation - A Developed Country Business Perspective
"Mobilizing Support for Building the Foundation of International Trade"**

Mr. Jim Clawson Chairman
U.S. Customs Industry Trade Advisory Council
Washington, D.C.

14:30 Session Nine: Trade Facilitation – A Developing Country Business Perspective

Mr. Donald Dee Trustee for the Garments Sector
PHILEXPORT
Manila

15:30 Afternoon Tea

**16:00 Concluding Session: Lessons for the WTO Negotiations from Trade Facilitation
within APEC**

Benefits of Trade Facilitation; Challenges for effective involvement of developing
countries, including possible technical assistance requirements

Mr. Andrew Stoler Moderator

Panel: H.E. Mr. Muhamad Noor Yacob
Mr. Joachim Graminsky
Mr. Donald Dee
Mr. Jim Clawson

17:30 End of Workshop

**APEC Workshop on the WTO Trade Facilitation Negotiations
1-2 March 2005
Renaissance Hotel, Kuala Lumpur**

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