



Negotiating Group on Rules

NEGOTIATING GROUP ON RULES

**REPORT BY THE CHAIRMAN, H.E. MR WAYNE McCOOK TO
THE TRADE NEGOTIATIONS COMMITTEE**

7 December 2015

1. Since I last reported to the Membership, at the Trade Negotiations Committee on 31 July 2015, the Negotiating Group on Rules has been heavily engaged in attempting to achieve convergence on a possible package of deliverables in the Rules area for Nairobi.
2. As you will recall, after the summer break, some Members identified a number of areas of the DDA where they believed that convergence might be possible on Nairobi outcomes. One of these areas was transparency, including in the Rules area. This was in any event a natural place for the Group to resume its efforts, as it had before it a paper, submitted during the summer, relating to transparency in all four areas of the Rules negotiations (anti-dumping, subsidies and countervailing measures, fisheries subsidies, and RTAs). Accordingly, the Group began to work intensively in an effort to test whether in fact transparency in Rules was an area where Nairobi outcomes might be possible.
3. As always, our process in the Group was deliberate, transparent and Member-driven. Given that we were now working towards Nairobi outcomes, rather than towards a Work Program, I asked Members seeking such outcomes to come forward with concrete proposals for the Group's consideration. Ultimately, we received a renewed proposal covering all four areas of the Rules negotiations, three proposals relating exclusively to fisheries subsidies, one proposal relating exclusively to anti-dumping, and one proposal relating to anti-dumping and countervailing measures.
4. We have over the past few months met frequently, in a wide variety of configurations, as we sought to focus our work and identify options for Rules deliverables that might be agreed at Nairobi. During that work, several clear developments have emerged.
5. First, there are differing perceptions of what is meant by the concept of transparency in Rules, with some delegations embracing a strict approach to this concept, and others taking a broader approach.
6. Second, it is clear that some Members do not consider it appropriate to limit our work on deliverables to transparency issues. These Members believe that the Group should continue to work towards substantive deliverables at Nairobi, at least in some areas of the Rules mandate.
7. Third, some Members question the utility of transparency as a focus of the Group's work. In particular, some Members consider that transparency is not a developmental outcome, and thus is not appropriate for Ministerial action at Nairobi.
8. Finally, some Members consider that outcomes with respect to the various areas of the Rules agenda must be balanced. In particular, clear linkages have been drawn by some Members between outcomes and ambition levels on anti-dumping and on fisheries subsidies.
9. In addition to these substantive disagreements on what we should aim for as Nairobi outcomes, our work has naturally been influenced by the overall negotiating environment of the DDA.

Although the issues of "sequencing" which affected our work in the first half of the year became less pronounced in the autumn, the need to calibrate the ambition in our work to developments elsewhere in the DDA, and the uncertainty surrounding that ambition level, has substantially complicated our work, even if conducted on a strictly "without prejudice" basis.

10. Our work has been further complicated by issues arising from the relationship between possible Nairobi outcomes and the sharply differing perspectives of Members on the post-Nairobi framework for future work. Put simply, some Members have been concerned that achieving outcomes at Nairobi on Rules could be perceived to prejudice the nature and extent of future work in the Rules area. Related to this have been the views of some delegations that it is not possible to "cherry pick" outcomes in the DDA.

11. Despite these challenges, it is my sense that we have made significant progress at least in sharpening the options advanced by proponents for outcomes in Nairobi. Proponents have, over the past few months, put before the Group a range of specific ideas for Rules outcomes. These proposed outcomes, to varying degrees, initially related to all four areas of the negotiations. Proponents have worked hard to achieve doable proposals, and this has required significant efforts to recalibrate their ambitions.

12. Our work this autumn has seen an evolution of ambitions for Nairobi on a number of fronts. First, our work focused increasingly on anti-dumping and countervailing measures on the one hand, and fisheries subsidies on the other. It became apparent that horizontal subsidy issues beyond countervail, and regional trade agreements, would not be the subject of Nairobi outcomes. Second, Members increasingly shifted their Nairobi ambitions from treaty text amendments, for which time clearly was running short, to action that could be taken through Ministerial declarations or decisions. Third, Members with proposals that moved in similar directions in some cases consolidated their approaches, or in any event have signalled their willingness to be flexible about pursuing approaches advocated by other proponents. Finally, some, although not all, of the proposals evolved towards directional decisions that would require further negotiations or other work post-Nairobi.

13. While the situation before us, both within our Group and horizontally, clearly is not auspicious, the Group has continued to work, with two revised or consolidated proposals received as recently as last week. Indeed, the Group first met to discuss these proposals on this past Friday, and will meet again to complete that discussion tomorrow. At this point, therefore the Group still has before it a number of concrete options for Nairobi outcomes.

14. On fisheries subsidies, these include two closely-related proposals for a WTO-transparency outcome in respect of fisheries subsidies transparency as well as a consolidated proposal from several proponents for an agreement in principle on certain fisheries subsidies outcomes in the form of a prohibition of certain subsidies, along with transparency and S&D elements. On anti-dumping and countervail, the Group has before it most notably a proposal to task the AD and SCM Committees to clarify the implementation of certain transparency-related procedures and report the outcomes to the General Council for appropriate actions within twelve months.

15. I am of course fully aware of the profoundly difficult overall situation in which we find ourselves, and know that our ability to continue work on Rules outcomes with any possible chance of success is entirely dependent upon progress elsewhere in the Round. I expect that we will obtain further clarity today about whether any such progress is likely to emerge.

16. Further, I am entirely conscious that the Group is far from achieving convergence even on any of the very significantly recalibrated proposals now before it. Indeed, the broader environment has not allowed us to really begin negotiations in earnest on these proposals. Nevertheless, I have pursued and will continue to pursue the quest for outcomes as long as proponents so desire and Members generally are prepared to engage.
