

Council for Trade in Goods

**TRADE FACILITATION - CONTRIBUTIONS RECEIVED FROM
OTHER WTO BODIES**

Note by the Secretariat

I. INTRODUCTION

1. On 8 July 1998, the Council for Trade in Goods agreed to carry out its further work on trade facilitation as set out in a Chairman's proposal on future work (contained in G/C/M/34). Paragraph 3 of the Chairman's proposal states:

"Furthermore, the Chairman of the CTG will invite the Chairpersons of the Committees on Customs Valuation, Import Licensing, Rules of Origin, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, the Chairperson of the Working Party on Preshipment Inspection and, as appropriate, the Chairpersons of other subsidiary bodies of the CTG to propose an item "trade facilitation" for inclusion in the agenda of their meetings. Under this agenda item, these bodies will henceforth address those aspects of trade facilitation which they regard as being related to the respective agreements with a view to introducing the results of these discussions into the informal CTG discussions on trade facilitation in March 1999. The Chairman of the CTG will also contact the Chairpersons of the Council for Trade in Services and the Council for TRIPS as well as the Chairperson of the Committee on Trade and Development to suggest that these bodies make a similar contribution."

2. On 1 September 1998, the Chairman of the CTG wrote a letter to the Chairpersons of the bodies mentioned above, requesting them to address those aspects of trade facilitation which they regard as being related to the respective agreements and areas of work, with a view to introducing the results of these discussions into the informal CTG discussions on trade facilitation in March 1999¹.

3. In conducting their work, the Council for TRIPS, the Committee on Trade and Development, and the Committee on Customs Valuation requested the Secretariat to prepare background notes on the relationship between their respective areas of work and trade facilitation. The papers prepared in this context carry the symbols IP/C/W/123 (TRIPS Council), WT/COMTD/W/57 (Committee on Trade and Development), and G/VAL/W/32 (Customs Valuation). Also, the Secretariat circulated an informal note on the GATS and trade facilitation (Job No. 5156) at a meeting of the Council for Trade in Services on 14 October 1998.

4. The following responses have been received from those WTO bodies mentioned in paragraph 3 of the Chairman's proposal on future work:

¹ The informal meeting initially foreseen for March has been postponed to 19 and 20 April 1999.

II. COMMITTEE ON TECHNICAL BARRIERS TO TRADE

5. The Committee on Technical Barriers to Trade held discussions on trade facilitation at its meetings of 20 November 1998 and 31 March 1999, and will continue its discussions on this matter at its next meeting in June 1999. Records of the discussions of the November meeting are contained in document G/TBT/M/14. On behalf of the Committee, the Chairman submitted a note with the following content to the Chairman of the Council for Trade in Goods:

“The objective of the Agreement on Technical Barriers to Trade is to minimize technical barriers to trade. The text of the Agreement recognizes the importance of trade facilitation. It is reflected, for example, in the provisions related to non-discrimination, the avoidance of unnecessary obstacles of trade, encouragement of harmonization, the concept of equivalence, mutual recognition and transparency. In particular, under the transparency provisions of the Agreement, industries and traders can obtain standard related information from national enquiry points, and opportunities are provided for Members to comment on other Members' draft technical regulations and conformity assessment procedures to avoid unnecessary trade obstacles.

In accordance with Article 13.1 of the Agreement, each Member has the opportunity of consulting in the Committee any matters relating to the operation of the Agreement to the furtherance of its objective. At each regular meeting, the Committee hears statements on the implementation and administration of the Agreement. Measures have been brought to the attention of the Committee by Members who raise concerns about the potential adverse trade effects or inconsistency with the Agreement of those measures. Under Article 15.2 of the Agreement, Members have informed the Committee of measures taken to ensure the implementation and administration of the Agreement.

Article 15.4 of the Agreement provides that the Committee review the operation and implementation of the Agreement every three years. The First Triennial Review was conducted at the end of 1997. The Committee reiterated the importance of the prevention and elimination of technical barriers to trade and the essential role of the Agreement furthering these objectives. The Committee noted, however, that certain difficulties or problems existed in a number of areas regarding the operation and implementation of the Agreement (G/TBT/5). The Committee started its programme of work arising from the First Triennial Review at the beginning of 1998. This is providing Members further opportunities to hold discussions on elements in relation to trade facilitation.

To conclude, the provisions of the TBT Agreement are by their very nature relevant to trade facilitation. Issues related to this matter have therefore been a regular feature of the work of the TBT Committee. They are being addressed regularly, in particular, under the agenda item ‘Statements on Implementation and Administration of the Agreement’.”

III. COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES

6. The Chairman of the Committee on Sanitary and Phytosanitary Measures reported that the SPS Committee had met informally to discuss problems related to trade facilitation and the request of the Council for Trade in Goods on this matter. The Chairman had been asked by the Committee to submit the following response:

“Introduction

The text of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) recognizes the importance of trade facilitation. The preamble to the SPS

Agreement emphasizes the desirability of harmonizing sanitary and phytosanitary measures between Members and notes the important contribution that international standards, guidelines and recommendations can make in this regard. Two aspects of the SPS Committee's work are particularly relevant to trade facilitation, notably (i) the regular provision of information from Members on the implementation of the SPS Agreement, and the (ii) SPS Committee's work related to the international standard-setting organizations.

Information from Members on the implementation of the SPS Agreement

At each regular SPS Committee meeting, Members are given the opportunity to provide any information with regard to the implementation of the SPS Agreement. Under this agenda item, which has been widely used, Members have raised issues regarding specific trade concerns, matters related to the operation of the transparency provisions of the Agreement and other relevant matters. Issues raised in 1998 include: bilateral agreements and consultations between Members; the recognition of the disease- or pest-free status of countries; and the use of international standards. In respect of concerns of a more specific nature, the Committee has examined, *inter alia*, measures related to BSE; measures related to maximum levels of aflatoxins in food; measures related to establishments operating in the animal feed sector; measures related to food and food ingredients treated with ionizing radiation; measures affecting apples, pears, quinces, ware potatoes, meat and livestock products, pork and pork products, poultry products, dairy products, milled rice, coconut palms and related products, and fish products. In most cases, the purpose of raising these issues in the context of the SPS Committee meetings has been to facilitate trade by way of identifying, clarifying and, where feasible, resolving specific matters. The Committee has also discussed developments in relation to the recognition of pest- or disease-free areas and the recognition of equivalence of SPS measures. The summary reports of each meeting record the issues considered and the work of the Committee in this regard (G/SPS/R/ series).

The transparency provisions of the Agreement also are of cardinal importance for facilitating trade. Members must give notice in advance of the implementation of new, or modification of existing, sanitary or phytosanitary measures, except in situations of emergency actions. This procedure affords Members the opportunity to comment on and seek changes in the proposed measures before their implementation. Since the entry into force of the SPS Agreement, over 1,000 notifications have been circulated. The obligation for Members to identify a national notification authority and to establish an enquiry point to respond to requests for information on SPS measures requires coordination among the various national agencies with responsibility for sanitary and phytosanitary measures. Such coordination, along with the information provided, is important for trade facilitation. As part of the review provided for in Article 12.7 of the SPS Agreement, a number of specific proposals have been made to improve the functioning of the transparency and notification procedures. The proposals are reflected in the draft report on the review exercise currently under consideration by the Committee (G/SPS/W/92). Although the operation of national enquiry points is generally satisfactory, coordination among domestic agencies could be improved. The notification of bilateral equivalency recognition agreements has also been suggested.

The SPS Committee's work related to the international standard-setting organizations

Under the SPS Agreement, Members are encouraged to play a full part in the work of the relevant international organizations and in their subsidiary bodies, in particular the FAO/WHO Codex Alimentarius Commission (Codex), the Office international des épizooties (OIE) and the FAO International Plant Protection Convention (IPPC). These organizations

are observers in the SPS Committee. They regularly report on any activities that are relevant to the work of the SPS Committee, such as the status of international standards.

One of the specific tasks of the SPS Committee, as set out in Articles 3.5 and 12.4 of the SPS Agreement, is to develop a procedure to monitor the process of international harmonization and coordinate efforts in this regard with the relevant international organizations. A provisional procedure to this effect was implemented on the basis of a decision by the Committee in October 1997 and is currently a regular agenda item in the work of the Committee (G/SPS/11, dated 22 October 1997, refers). The purpose of this procedure is to identify cases where non-use of international standards, guidelines or recommendations results in a major impact on trade and to determine the reasons for the non-use of the standards, guidelines or recommendation concerned. According to this procedure, Members are invited to submit, in advance of each regular meeting, examples of what they consider to be problems with significant trade impact which they believe are related to the use or non-use of a relevant international standard, guideline or recommendation. The submissions are compiled by the Secretariat. In accordance with this procedure, the Secretariat has drafted the first annual report on the standards identified and comments made on these, which is under consideration by the Committee (G/SPS/W/94). When agreed, this report will be transmitted to the international organizations responsible for developing the relevant sanitary and phytosanitary standard, guideline or recommendation. To date the Committee has discussed submissions of this nature from four Members (G/SPS/W/87, G/SPS/W/89, G/SPS/W/91 and G/SPS/W/96 refer).

As part of its review of the Agreement in terms of Article 12.7, the Committee is examining concerns with implementation of various provisions. Many of these have implications for trade facilitation. The issues and proposals considered will be reflected in the report on the review exercise.

Conclusion

The provisions of the SPS Agreement are by their very nature relevant to trade facilitation. Issues related to this matter have therefore been a regular feature of the work of the SPS Committee. They are being addressed particularly under three *regular* agenda items: (i) implementation of the Agreement (including specific trade concerns); (ii) matters of interest arising from the work of observer organizations; and (iii) monitoring the use of international standards. In light of this, the SPS Committee does not consider it necessary to add an additional agenda item entitled "Trade Facilitation" as part of its regular agenda."

IV. COMMITTEE ON IMPORT LICENSING

7. The following information was received from the Chairperson of the Committee on Import Licensing:

"The Committee on Import Licensing, at its meeting on 20 October 1998 and at informal consultations held on 16 February and 8 March 1999, discussed those aspects of trade facilitation which it regarded as being related to the Agreement on Import Licensing Procedures.

Some delegations observed that the Agreement recognized the importance of trade facilitation and that it embodied concepts and principles which were important to facilitate trade. The Preamble of the Agreement recognized that "the flow of international trade could be impeded by the inappropriate use of import licensing procedures" and the desire of Members to

"simplify, and bring transparency to, the administrative procedures and practices used in international trade, and to ensure the fair and equitable application and administration of such procedures and practices". Thus the Agreement aimed to ensure that the administrative procedures applied for granting import licences did not in themselves have restrictive or distortive effects on imports; were simple, transparent, predictable, impartially applied and administered; and were not more administratively burdensome than necessary.

Some delegations highlighted the important link between trade facilitation and the Agreement and considered that transparency and the rapid release of goods, which were the objectives of trade facilitation, could be better accomplished if Members were more diligent with respect to implementing the obligations of the Agreement. The obligation for timely notification played an important role in enhancing transparency of import licensing procedures. In this context, one delegation suggested that notifications be made more accessible to the private sector, and that the Secretariat play a role in ensuring greater distribution of information by creating a linkage between the WTO's Internet site and national sites containing information on import regulations. This delegation proposed that the aspects related to import licensing as mentioned in paragraph 12 of document G/C/W/114 be considered.

Some delegations also stated that while the disciplines of the Agreement were designed to ensure that no additional procedural obstacles were created in administering import licensing policies, its purpose was the avoidance of barriers rather than the facilitation of trade *per se*. One delegation, in its communication (G/C/W/136), noted that procedures for granting import licences could be improved by making them an integral part of simplified trade procedures. Its proposals included the reduction of data requirements to a minimum necessary for effective controls, harmonization of data and documentation requirements, the need to apply to a single agency for the issuing of an import licence ("single-window" principle), and automation and modernization of import licensing management and verification operations. This delegation was of the view that the adoption of these innovations, as a component of WTO rules to simplify trade procedures, would bring identifiable benefits for traders through reduced costs and delays, and would improve control capabilities of governments using import licensing, at a lower cost. Some delegations also highlighted the linkage between trade facilitation and development including with respect to matters relating to technical cooperation and assistance to developing countries in the area of import licensing procedures.

Some delegations were of the view that appeal and review procedures as well as prior notification of changes to import licensing procedures were areas where rules of the Agreement might be improved to further reduce the unintended disruptions to trade that may be caused by the issuance of import licences.

Some delegations were of the view that the WTO's work on trade facilitation should not duplicate that of other organizations and fora such as the WCO and APEC."

V. COMMITTEE ON RULES OF ORIGIN

8. The following reply was received from the Chairperson of the Committee on Rules of Origin:

"The Committee on Rules of Origin (CRO), at its meetings on 15 October 1998 and 22 February 1999, discussed those aspects of trade facilitation which it regarded as being related to the Agreement on Rules of Origin (the Agreement).

It should be noted that the Preamble of the Agreement recognizes that “clear and predictable rules of origin and their application facilitate the flow of international trade”, and that the clarity and predictability of rules of origin, in turn, is to be ensured when the Agreement itself is fully implemented by all Members. The following aspects of the Agreement are particularly relevant for trade facilitation: (i) implementation of Article 2 and paragraph 3 of Annex II of the Agreement; and (ii) harmonization of non-preferential rules of origin. Some delegations observed that the concept of trade facilitation may extend beyond the present provisions of the Agreement, for example, to administrative aspects of the application of the harmonized rules of origin.

Implementation of Article 2 and paragraph 3 of Annex II of the Agreement

Article 2 of the Agreement establishes disciplines which Members should fulfil during the transition period. Similar disciplines are also provided for in paragraph 3 of Annex II of the Agreement. These disciplines include several procedural provisions which lead to simplification of trade procedures if they are fully implemented: (i) prompt publication of rules (Article 2(g) and paragraph 3(c) of Annex II); (ii) advance binding assessment of origin (Article 2(h) and paragraph 3(d) of Annex II); (iii) non-retroactivity of the rule application (Article 2(i) and paragraph 3(e) of Annex II); (iv) availability of judicial review of administrative action (Article 2(j) and paragraph 3(f) of Annex II); and (v) confidentiality of information (Article 2(k) and paragraph 3(g) of Annex II).

In this context, attention is drawn in particular to the advance binding assessment of origin. The CRO, at its meeting on 3 October 1997, mandated the Secretariat to conduct a survey of Members’ practices with reference to Article 2(h) as well as paragraph 3(d) of Annex II of the Agreement. The Secretariat has circulated information provided by 33 Members in documents G/RO/W/26 and G/RO/W/26/Add.1. On the basis of these submissions, it appears that 13 of these 33 Members implement Article 2(h) and paragraph 3(d) of Annex II of the Agreement. It should also be noted that 37 Members have notified the Secretariat that they do not have non-preferential rules of origin (see documents G/RO/N/1-24).

It should further be noted that some Members have stated that, although they have not established an explicit procedure, they, by way of administrative means, are fulfilling the obligations as provided for under Article 2(h) of the Agreement.

Finally, as concerns the implementation of paragraph 3(d) of Annex II of the Agreement, some Members, in their responses to the Secretariat’s enquiry, pointed out that preferential trade regimes are managed by specific certificate-of-origin schemes applicable to those preferential transactions.

Harmonization of non-preferential rules of origin

One of the objectives of the Agreement is to harmonize and clarify non-preferential rules of origin; i.e. to establish an international common system of non-preferential rules of origin which will provide more certainty in the conduct of world trade. Pursuant to Article 3(a) of the Agreement, upon completion of the HWP, Members should apply the harmonized rules of origin as defined in Article 1.1 equally for all purposes as set out in Article 1.2 of the Agreement. The harmonized rules of origin should also be “objective, understandable and predictable”, and “should be administrable in a consistent, uniform, impartial and reasonable manner” (see Article 9.1(c) and (e) of the Agreement).

Due to the complexity of these issues, the HWP, which was launched in July 1995, was not completed within three years of its initiation as foreseen in the Agreement. In July 1998, Members agreed to extend the deadline, and to commit themselves to make their best endeavours to complete the HWP by November 1999 (see G/RO/25).”

VI. COMMITTEE ON CUSTOMS VALUATION

9. The following letter was received from the Chairman of the Committee on Customs Valuation:

“The Committee [on Customs Valuation] started discussions on the relationship between trade facilitation and the Customs Valuation Agreement at its meeting of 13 November 1998 where a preliminary exchange of views was held. To assist the Committee's discussions, the Secretariat prepared a paper, contained in G/VAL/W/32, on the linkages between trade facilitation and the Agreement on Customs Valuation.

The discussion of trade facilitation and customs matters covers an extremely wide breadth of economic activity. The Report by the Secretariat of the WTO Trade Facilitation Symposium (G/C/W/115) held 9-10 March 1998, highlights many of the areas and issues that arise from this relationship through the presentations that were made by the participants of their experiences. While many of these presentations cover customs procedures, the WTO Agreement on Customs Valuation deals exclusively with valuation of imports for customs purposes. It was observed that the procedures used by customs administrations and their organization and administration are strongly linked to the effective implementation of the Agreement, and its contribution towards facilitating trade. However, the mandate of the Agreement limits the Committee's role in customs matters to those relating to valuation. In this context, it has been observed in the communication from the European Communities (G/C/W/136) that introduction of some trade facilitation rules would improve the capacity of WTO Members to apply the Agreement properly. This communication stated, for example, that pre-arrival processing of electronically transferred data from traders to customs administrations reduces error levels, speeds up processing of declarations, and frees customs resources to apply correctly the provisions of the Agreement. This could be a major benefit for those WTO Members who are now preparing to apply the Agreement in full for the first time. Further, modern customs techniques of risk assessment, auditing and rapid release facilities for authorised traders similarly enables customs to concentrate expertise and resources on targeting higher risk consignments and thus reduce fraud carried out by undervaluation or misclassification of goods.

At its meeting of 13 November 1998, the Committee on Customs Valuation took up the item trade facilitation in a preliminary exchange of views. The report of this meeting is contained in document G/VAL/M/9. Some delegations highlighted the important link between trade facilitation and the Agreement on Customs Valuation. In fact, some considered that valuation of imported goods and the effective implementation of the Agreement were one of the most important contributions to the trade transaction process and therefore to the facilitation of trade. Some delegations noted several reasons for the importance of this link. First, full implementation of the Agreement would assist in greater uniformity and certainty of implementation of tariff commitments when valuation was conducted according to the multilaterally agreed rules in the Agreement. Second, the Agreement was about improved operation of instruments and improved operation and organization of valuation issues.

It was also mentioned that some specific aspects of the Agreement related to trade facilitation and were commonly considered to be "best customs practices". This included, for

example, the provisions in Article 11 stipulating that the legislation of each Member shall provide for the right to appeal any determination of customs value by the importer or any other person liable for the payment to an authority within customs and ultimately to a judicial body; in Article 12 requiring the publication of all laws, regulations, judicial decisions and administrative rulings of general application giving effect to the Agreement, in accordance with Article X of GATT 1994; and in Article 13 which requires that Member's legislation make provision for the right of importers to withdraw imported goods, pending any final determination of customs value, with provision of a sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument. It was mentioned that the release of goods prior to clearance had been an internationally recognized "best customs practice". One proposal, supported by some delegations, was that part of the further work on trade facilitation could examine the implementation of these three provisions.

Several delegations highlighted the need to be mindful, in any discussion of trade facilitation, of the differences in economic and commercial developments as well as the use of information technology. In this regard, they noted the great need for technical assistance to increase capacity in terms of both infrastructure and human resource development. It was also noted that the Agreement on Customs Valuation provides several special and differential treatment provisions for developing countries in Article 20 and Annex III of the Agreement. In particular, attention should be drawn to Article 20.1 of the Agreement which foresees the possibility for a developing country Member to delay implementing the Agreement for a period not exceeding five years. This period of time is to be used by the Member to make the transition to the Customs Valuation Agreement. In addition, Article 20.3 provides that "developed country Members furnish, on mutually agreed terms, technical assistance to developing country Members that so request. On this basis, developed country Members shall draw up programmes of technical assistance which may include, *inter alia*, training of personnel, assistance in preparing implementation measures, access to sources of information regarding customs valuation methodology, and advice on the application of the provisions of the Agreement". Some fifty-three developing country Members have invoked the delay period which will expire within the following one to two years. For this reason, the Committee agreed to engage more actively in the area of technical assistance.

It was agreed that technical assistance should be tailored to the specific needs of the Member concerned. Identification of those needs was assisted by a questionnaire, the responses to which have assisted in the establishment by the Secretariat of a Programme of Technical Assistance, which has already benefitted fourteen Members. In addition, some developed country Members informed the Committee of the technical assistance activities they had conducted or were conducting. Some delegations pointed out the benefit of developing a framework for trade facilitation that would ensure coherent cooperation between relevant international organizations in the field of technical assistance and capacity building. The Committee also agreed that the responses to the questionnaire (G/VAL/W/24/Rev.1) should be forwarded by a senior WTO official to other international organizations in order to draw their attention to the needs identified in developing country Members with respect to this Agreement and its implementation. Such a letter, it was felt, would serve to better coordinate the efforts of all the organizations and to avoid duplication in any of the technical assistance provided."

VII. WORKING PARTY ON PRESHIPMENT INSPECTION

10. Considerations on the relationship between the Agreement on Preshipment Inspection and trade facilitation are contained in paragraph 20 the Working Party's final report (G/L/300). The paragraph reads as follows:

“The Working Party discussed this issue in response to a request from the Council for Trade in Goods, at its meeting of 5 June and 8 July, that its sub-committees and working parties add this item on to their formal agenda. From these discussions in the informal group, two themes emerged. The first is that any improvement to the efficient functioning of the Agreement, as identified above, will in itself help to facilitate trade. The second is that facilitation measures, notably the modernisation and reform of customs procedure, through the adoption of international standards and practises for documentation and data, coupled with introduction of modern customs techniques by national customs authorities, will make it easier for countries to move away from PSI systems, leading ultimately to better use of resources, improved revenue collection and control, and greater facilitation of trade.”

VIII. COUNCIL FOR TRADE IN SERVICES

11. The following reply was received from the Chairman of the Council for Trade in Services:

“Informal consultations [of the Council for Trade in Services] were held on 6 October 1998, to provide for an initial exchange of views on the subject of trade facilitation as it relates to the GATS. On this occasion, several delegations expressed the view that trade facilitation in services should not be discussed in the CTS as a separate item, but should rather be taken up as it relates to individual services sectors in the context of the exchange of information exercise. One delegation also suggested that issues relating to Electronic Data Interchange (EDI) be taken up in the context of the Work Programme on Electronic Commerce.

At the Services Council meeting of 14 October 1998 the Secretariat circulated an Informal Note dated 24 September 1998 (Job No. 5156) containing a short paper on the GATS and Trade Facilitation, which had been originally prepared as an input to the WTO Symposium on Trade Facilitation held in March 1998. The Note focused on the role of services liberalisation under the GATS in facilitating trade in goods, while it did not take up the issue of whether the concept of trade facilitation as originally raised in relation to trade in goods was applicable to trade in services under the GATS.

The sense of discussions held in the CTS was that the concept of trade facilitation as originally raised in the context of trade in goods, i.e. mainly concerned with simplifying, streamlining and modernising customs formalities and administrative procedures, was not as such applicable to trade in services. However, in a broader sense, it was felt that liberalisation of trade in services could play an important role in facilitating trade in goods. For example, as internationally traded goods are physically transported across national borders, transport services provide the essential infrastructure for cross-border trade. In the sectoral discussion on maritime transport services, which took place at the Services Council meeting of 9 December 1998, delegations underlined the importance of coordinating work in this sector with the work on trade facilitation taking place in the Council for Trade in Goods. Competition in transport services is likely to bring down costs and improve the quality and choice of transport services available to importers of goods. Another service sector of even more direct relevance to trade facilitation in goods is Electronic Data Interchange (EDI). Also, telecommunication technology can facilitate trade, by allowing for faster and more efficient communication between traders, businesses and government agencies, thus reducing delays at borders and complicated and unnecessary documentation. EDI significantly reduces waiting times for traders as it allows them to provide different government agencies with all the necessary documentation for clearance at the borders and to obtain the necessary approvals through the network.”

IX. COUNCIL FOR TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

12. The following letter was received from the Chairman of the TRIPS Council:

“The Council for TRIPS took up the issue of trade facilitation in response to this request at its meeting of 1-2 December 1998 and 17 February 1999. At its meeting in February 1999, the Council had before it a non-paper submitted by the European Communities and their member States, Job No. 7109, as well as a Secretariat background note on the relationship between the TRIPS Agreement and trade facilitation, document IP/C/W/123. The Council agreed that its Chair should convey to the Council for Trade in Goods the record of the discussions that it had held on this agenda item, as reflected in the minutes of the Council, together with copies of the papers that had been presented to the Council on this matter.”

The discussions of the Council are reflected in the minutes with the following symbols: IP/C/M/20, IP/C/M/21, IP/C/M/22. The non-paper submitted by the European Communities is attached in an Annex to this document.

X. COMMITTEE ON TRADE AND DEVELOPMENT

13. The following letter was received from the Chairman of the Committee on Trade and Development:

“First, CTD Members began with an extensive informal and valuable extensive exchange of views on the subject. Second, following this exchange, the Secretariat was formally requested by CTD Members to produce a paper entitled: **"Development Aspects of Trade Facilitation"**. This paper, contained in document WT/COMTD/W/57, was requested by Members, to assist in framing their further exchange of views and discussions on the subject. Third, these further exchange of views took place amongst Members formally and informally. The notes of the formal meetings of the CTD underscore the richness of the debate on the subject. These are contained in documents WT/COMTD/M/22, WT/COMTD/M/23/, and, WT/COMTD/M/24 – yet to be issued.

Fourth, I would like to draw your attention to the presentation by UNCTAD, represented by Mr. Maxence Orthlieb, on the subject, following a request by Members. The presentation by UNCTAD was made on 2 November 1998.

Finally, following the understanding that emerged in Informal Consultations in the CTD, most recently on 1 April 1999, I am pleased to attach herewith, a list of issues, contained in an Issues Paper, prepared by the Secretariat on its own responsibility². This Issues Paper reflects the main points that were evident in the course of statements made at the CTD while considering this important subject. In conveying this paper, it is necessary to emphasise that the attached list of issues was neither negotiated nor do they necessarily reflect common or agreed positions of Members of the CTD."

² contained in Annex II.

ANNEX I

Job. 7109
**Council for Trade-Related Aspects
of Intellectual Property Rights**

23 December 1998

TRADE FACILITATION

Discussion Paper from the European Communities and their member States

The present document reproduces the text of an informal discussion paper on trade facilitation and border infringement of intellectual property rights made available by the European Communities and their member States at the informal meeting of the TRIPS Council on 1 December 1998.

TRADE FACILITATION AND BORDER ENFORCEMENT OF INTELLECTUAL PROPERTY RIGHTS

I. INTRODUCTION

The Singapore Ministerial Meeting mandated the WTO Council on Trade in Goods (CTG) to carry out "analytical work on the simplification of trade procedures . . . in order to assess the scope for WTO rules in this area". That work is now underway in the CTG. As part of its mandate the CTG has also invited other WTO bodies to consider the relevance of trade facilitation to their work. Hence the invitation to the TRIPS Council, which has placed trade facilitation on its agenda.

II. SIMPLIFICATION AND MODERNIZATION OF CUSTOMS PROCEDURES

Much of the discussions in the CTG have been on customs related issues, notably on the scope for WTO rules to modernize and improve customs rules and procedures in order to facilitate legitimate border-crossing trade. The Community, among others, has made a comprehensive submission on this subject arguing the case for WTO rules on customs and other issues (G/C/W/122 of 22 September 1998). Among other things, we have proposed that any future WTO rule-making in this area should include commitments to introduce modern customs procedures and techniques, such as pre-arrival processing of data and documentation; risk assessment techniques as opposed to inspection of individual consignments, rapid, "green channel" release of goods of authorized traders with a known compliance record; automated transfer of data from importers to customs administrations and so on. Several of these modern customs techniques are being promoted by the World Customs Organisation as part of the revision of the Kyoto Convention.

III. THE TRIPS DIMENSION

In the TRIPS field customs reform is obviously relevant. Modern and simplified procedures based on risk assessment and profiling not only facilitate legitimate trade but also permit improvements in control and compliance levels, and overall efficiency of customs. A recent

Symposium on Trade Facilitation held in the WTO in March heard several interesting examples from both developed and developing countries of how simplifying and modernizing customs procedures had not only benefited bona fide traders but also improved border control and enforcement, and enabled customs administrations to reduce incidences of underdeclaration, leading to higher revenue intakes.

The World Customs Organisation, in its own programme for Customs Reform and Modernization (CRM), recognizes the positive relationship between trade facilitation, trader compliance and improved customs controls, including controls on restricted goods. We recall that a recurrent concern of some WTO Members has been over how to ensure compliance with the border enforcement provisions of the TRIPS Agreement against a background of static or dwindling resources. Introduction of modern, trade facilitating customs techniques – such as those introduced by several Latin American countries recently (and which were presented at the WTO March Symposium), or those set out in the WCO's CRM Programme – enable customs to focus resources on increasing detection levels of prohibited or restricted goods (e.g. IPR-infringing goods), ensure better compliance with regulations and hence fewer offences, and improve the cost-efficiency of customs administrations. As we saw from examples given in the WTO Symposium, any additional resources needed for training and reorganisation of customs can be recouped quite rapidly through higher rates of revenue/duty collection, and gains in efficiency.

IV. CONCLUSION

The Community therefore considers that successful implementation of the border enforcement provisions and Article 69 ("International Cooperation") of the TRIPS Agreement can only be enhanced through measures to simplify and modernize customs procedures and to activate international cooperation within an overall framework of trade facilitation. This strengthens in our view the already good case for developing, within the WTO, appropriate trade facilitation rules which would create momentum for customs modernization and reform.

ANNEX II

Issues Paper - Trade Facilitation and Development

Points raised in the context of the CTD

Trade Facilitation and Development

The issues listed in subsequent paragraphs have been compiled by the Secretariat from statements made by Members in the course of informal consultations as well as formal meetings in the Committee on Trade and Development (CTD) on the item entitled, "**Trade Facilitation: Contributions By the CTD to the Work Programme of the Council for Trade in Goods (CTG)**". These issues which were evident in the discussions were, however, neither negotiated nor do they necessarily reflect common or agreed positions of Members of the CTD. They are as hereunder:

1. Vigorous and continuing promotion of trade facilitation, in all its aspects, is an indispensable element for any development policy. The establishment of more rational trade procedures will lead to the reduction of excessive costs, rational allocation of resources and encouragement of trade and investment. Although it was evident that all participants would gain from facilitation of trade and there were overall positive benefits, nonetheless, there could be short-term costs.
2. Issues identified as central to trade facilitation in development include:
 - simplification and greater transparency in official documentation, through simplification of documentary requirements, simplification and/or harmonization of packaging, labelling, standards and health/sanitary requirements, and transparency of information;
 - increased transparency and predictability of legislation and regulations, through publication, appropriate and stable application of such laws and rules and the minimization of administrative discretion; harmonization of tariff structures;
 - streamlining of official controls and procedures, including Customs and international payments procedures, by such means as pre-arrival Customs processing, "green-channel" processing, self-assessment of trusted traders, advance duty settlement procedures, and payment guarantees. To this end, rapid release of goods was important for development and encouraged investment;
 - facilitation of trade procedures through increased use of information technology;
 - harmonization and simplification of regulations relating to the transport and transit of goods, including development and acceptance of appropriate international rules; and
 - simplification, acceleration, harmonization, greater security in and lower-cost structures of payments procedures; strengthening of export credit facilities and mechanisms.
3. The Columbus Declaration (made at the United Nations International Symposium on Trade Efficiency (UNISTE) in Columbus, Ohio, in 1994) identifies several areas in which measures could be taken to improve trade in many developing countries. These areas are: customs; transport; banking and insurance; business information for trade; business practices; and telecommunications.

4. Trade should take advantage of new technologies to achieve simplification, standardization, and harmonization of operations, documentation and practices. Automation and electronic means of delivery are important and strongly connected and complementary to trade facilitation.
5. The need for technical assistance in many of these areas is recognized, as is the work that is carried out by a number of intergovernmental or business-related organizations.
6. Trade facilitation is a win-win situation and a factor in economic development.
7. Nonetheless, import and export procedures serve functions of social importance. These include the control of socially illicit or intellectual property rights infringing goods at the border or to ensure citizens safety. The objective, therefore, would be to strike a balance between attaining accelerated import/export procedures, on the one hand, and at the same securing important social functions, on the other.

National Trade Facilitation Committees

8. Due to the diversity amongst countries, it is necessary in each country to begin by identifying key issues in trade facilitation. In this connection, National Trade Facilitation Committees may be important as fora for identifying issues, exchanging views, searching for solutions, and raising awareness on trade facilitation-related issues. Several considered that this identification of key issues required emphasis and further analysis as did National Trade Facilitation Committees.
9. National Trade Facilitation Committees (sometimes referred to as National Trade Facilitation and Transport Committees (NTTFC)) may serve to bring together all the key parties and interests in international trade, including users and providers of services in the public and private sectors. Such fora might thus include the ministries of trade, finance, transport and national planning, as well as transport operators, banks, insurance companies, customs, etc.

The Private Sector

10. Trade facilitation requires synergy between the public and the private sectors, particularly in the fields of transport, trade, finance and customs. Trade facilitation needs to support private initiatives. Conversely, the private sector needs to support trade facilitation.
11. The development of electronic trade and payments facilities may have important effects on trade facilitation in developing countries.

International Cooperation

12. A variety of views were expressed on the need to supplement rules on trade facilitation. While some felt that there was a need for explicit WTO rules on trade facilitation, others were yet to be convinced of the need for rules in this area, citing the second bullet of paragraph 21 of the Singapore Ministerial Declaration that directed the Council for Trade in Goods to undertake exploratory and analytical work, drawing on the work of other relevant international organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area.
13. A need has also been identified for closer cooperation between the WTO and other international agencies operating in the field, including UNCTAD, UNECE, WCO, the IMF and the World Bank. There is overlap and duplication in some trade facilitation activities of international agencies and the need for a more integrated structure of coordination that identifies more clearly the work that can be undertaken by each organization, including the WTO.

For least-developed countries, it has been suggested that assistance for trade facilitation should be carried out under the Integrated Framework for Trade-related Technical Assistance. However, not only least developed countries can benefit from assistance in this field and technical assistance efforts should not be limited only to LDCs. The private sector can also contribute to technical assistance.
