

TRADE FACILITATION

Draft Plan of Action by Switzerland

The following communication, dated 24 September 1997, has been received from the Permanent Mission of Switzerland.

---

**Executive Summary**

1. Trade Facilitation has long been a subject of action in many fora and organisations, both intergovernmental and non-governmental, but it is new to WTO, especially those aspects which may evolve to provide direct rights to operators. It is immediately beneficial to the trading community and, as such, it clearly warrants the attention of all WTO Members.

2. The purpose of this communication is to suggest five areas where Switzerland believes action in the field of Trade Facilitation should be taken by WTO: pre-arrival processing, customs irregularities, transit operations, harmonisation and risk assessment, as well as standardised information and electronic transmissions. It is proposed to hold an initial meeting of experts to be convened by the Secretariat, in order to elicit reactions from interested sides and to discuss further WTO work in this field (paras 25/26).

3. *We do not suggest to substitute rules and standards established in competent international bodies by WTO rules.* Our preferred approach would be (a) to incorporate by reference such rules and standards in WTO in a similar way the TBT and SPS Agreements refer to international standards, thus defining for WTO Members a number of new, implicit disciplines (as well as a higher degree of clarity and care when elaborating such rules in other fora); and (b) to envisage strengthening existing WTO rules where they pertain to the "best endeavour" category of rules (para 7).

**Areas for work in WTO**

General Remarks

4. Trade Ministers at Singapore have decided to "assess the scope for WTO rules" in the field of trade facilitation. The Secretariat has prepared two Background Notes<sup>1</sup>, and proposals for action

---

<sup>1</sup> G/C/W/70 dated 28 February 1997 and G/C/W/80 dated 23 May 1997.

in WTO have been made by the European Communities<sup>2</sup> and in the debate in the Council for Trade in Goods.<sup>3</sup>

5. In our opinion Trade Facilitation supports development. It contributes, especially in developing and transition countries, to reducing administrative costs, red tape, time and necessary civil service expertise in handling trade. On the export side, trade facilitation increases transparency and pre-visibility especially in remote markets. A number of trade facilitation instruments (e.g. ASYCUDA / UNCTAD) are already at their disposal, and more efforts in terms of technical co-operation will be warranted to enable them to fully benefit from such facilities.

6. There is no commonly accepted definition of trade facilitation. The EC have defined it broadly as being the "simplification of trade procedures for international traders and agencies in order to facilitate the trade transaction process".<sup>4</sup> We concur with such a definition and therefore strongly believe that "trade facilitation" requires a series of governmental and non-governmental actions in a number of areas of international trade regulations and procedures - regardless of whether they are applied at the border or not.

7. The legal status, in terms of international law and enforceability, of the instruments adopted by inter-governmental and non-governmental organisations, both at global and regional levels, is not always clear. However, the following classification might be attempted for practical purposes:

- |                        |  |
|------------------------|--|
| (i) "Law":             | Binding instruments of international law, subject to ratification and reserves, such as the Kyoto Convention (without its Annexes), the Harmonised System and some of the WTO obligations outlined in the Secretariat's paper.   |
| (ii) "Best endeavour": | Standards and recommendations constituting strongly recommended practices, not subject to ratifications or reserves: <ul style="list-style-type: none"><li>. of intergovernmental bodies (e.g. UN/ECE, Kyoto Annexes);</li><li>. of non-governmental organisations (e.g. ISO standards).</li></ul> |

---

<sup>2</sup> G/C/W/85 dated 20 August 1997.

<sup>3</sup> It should also be noted that, as recently as at their **Eighth Summit in Denver (USA)**, **G7 Members** have urged customs experts to complete their work on the standardisation and simplification of customs procedures as initiated at last year's Summit in Lyon as well as to identify opportunities to facilitate global electronic commerce. Also, **APEC**, the **Summit of the Americas** and the so-called **Transatlantic Business Dialogue (TABD)**, a business-driven initiative which aims at facilitating closer economic relations between the EU and the USA, to name but a few others, have taken further initiatives in this field whose importance in a globalising economy is thus no longer to be established.

<sup>4</sup> cf. G/C/W/85 dated 20 August 1997, *para* 1.

- (iii) "Technical Documentation", i.e. clearly documented and procedural options identified in various bodies, both intergovernmental and non-governmental ones.

8. Some of the WTO provisions quoted by the Secretariat<sup>5</sup> could also be classified in the second category (although, of course, they have been ratified by WTO Members). For instance, under the Agreement on Import Licensing Procedures, WTO Members commit themselves to simplify and bring transparency to their import licensing procedures and to administering them in a neutral and non-discriminatory manner. There are indicative time limits, publication and notification obligations as well as provisions allowing for judicial procedures in national courts as well as through the WTO dispute settlement mechanism. But, especially when it comes to rules meant to create a favourable business environment, those provisions often have nothing more than a programmatic character. Moreover, they have been established primarily in the rule-and-control interest of governments whereas the scope of the present exercise is to actually facilitate trade.

9. The proposals for work in WTO, as outlined below, are not presented in a particular order of priority; the list is non-exclusive and could easily be enlarged. For instance, non-customs subjects are certainly equally open for scrutiny under "trade facilitation". Incidentally, several procedures at the national level, both governmental and non-governmental ones, are seen as having a certain influence on international trade and should therefore be taken into account when trade facilitation is being addressed in a comprehensive manner. Also, international co-operation procedures in matters such as fraud prevention, drugs, corruption, public health and proliferation of strategic goods often contain potential for facilitating trade without impairing the objectives of such co-operation.

10. For the time being, however, our proposals are limited to subjects (a) which have been dealt with in one or more fora other than WTO (b) which could be relevant to WTO, and (c) where governmental adherence to rules both at the national and intergovernmental levels (including WTO) could be improved so as to allow for the speedy and easy carrying out of trading activities.

11. The principal international and regional organisations, intergovernmental and non-governmental, dealing with trade facilitation outside WTO have been described in the Secretariat's note. They will not be re-quoted here *in extenso*. However, in view of increased co-operation it will be important for the WTO Secretariat to participate as an observer in important meetings of those organisations and to keep WTO Members apprised of developments.

#### A. Pre-Arrival Processing

12. Pre-Arrival Processing is best described as the possibility for merchandise to cross a border without having to stop. Electronic customs processing or "one stop" facilities (i.e. for both countries at the same time and place) are but two examples worth mentioning here. Commercial practice, today, is following a clear trend in this respect, for instance through the concept of "authorised traders", i.e. companies allowed to certify origins, clear customs, etc. for both imports and exports - in other words, a "no stop"-procedure.

13. In WTO, *Article VIII of GATT 1994* relating to Fees and Formalities connected with Importation and Exportation does not, of course, prescribe one-stop or no-stop procedures, but one could argue that, where such technology is commonly available, WTO Members are under an obligation to introduce them since, in the absence of such a measure, their border fees and formalities will "represent an indirect protection to domestic products" prohibited by Article VIII. One could follow a similar line of argument

---

<sup>5</sup> G/C/W/80 dated 23 May 1997.

with regard to the obligations enshrined in the *Agreement on Import Licensing Procedures*, in the sense that such licenses must not in themselves restrict or distort trade.

14. The following questions arise: How far has progress in this field been achieved? Are the mentioned WTO rules sufficient, and do they have an overall positive impact on trade facilitation?

B. Customs Irregularities

15. A number of initiatives and rules have been set up to combat corruption and malpractice by customs authorities, not only in the (fiscal) interest of governments but also in order to allow trade to be carried out unimpeded by such problems. For instance, the *Arusha Declaration* of the WCO assigns top priority to the combat of corruption inside customs administrations.

16. In WTO, among the various agreements coming to mind in this respect are *Article VII - Valuation for Customs Purposes*, the *Agreement on Pre-Shipment Inspection*, the *Agreement on Import Licensing Procedures* and the plurilateral *Agreement on Government Procurement*. In addition, *Article X* prescribes the Publication and Administration of Trade Regulations and thus contributes to prevent arbitrary and harassment measures. The Secretariat's note contains many more provisions such as *Articles V, VIII and IX GATT 1994*, the Agreements on *Rules of Origin*, on *Preshipment Inspection*, on *TBT* and *SPS*, as well as *GATS* and *TRIPS*.

17. The following question arises: would further strengthening of such provisions help, in connection with the prescriptions and standards established outside WTO, not only to facilitate trade but also to further reduce customs irregularities world-wide?

C. Transit Operations

18. Transit operations are often prone to irregularities and fraud. They are thus subject to special border formalities. While antifraud measures are certainly legitimate and necessary, it may be worthwhile to discuss whether such formalities may be facilitated by improvements in pre-arrival processing - without impairing national efforts and international antifraud co-operation. A.T.A. Carnets established by national chambers of commerce facilitate such operations. UN-ECE (TIR) has extensively dealt with this subject. Progress has also been achieved in other areas (e.g. the Transit Convention EU - EFTA - 4Visegrad countries, NAFTA).

19. In WTO, *Article V* on Freedom of Transit not only consecrates the freedom of transit for traffic from every WTO Member across the territory of every other Member. It also states that "except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other Members shall not be subject to any unnecessary delays or restrictions".

20. The following question arises: could recommendations such as the ones established by UN-ECE be made mandatory for WTO Members (except where special circumstances justify deviations)?

D. Harmonisation and Risk Assessment

21. Perhaps the ultimate challenge in trade facilitation (and probably even more important than customs simplification) is the question of harmonisation of customs procedures aimed at, in particular but not exclusively, by the WCO International Convention on the Simplification and Harmonisation of Customs Procedures (*Kyoto Convention*), including through its presently ongoing Revision, due to be completed in 1999. A particular feature of the Draft Revised Kyoto Convention is its risk assessment and management procedure which establishes guidelines for customs operations in order to speed up procedures and clearance while optimising, whenever possible, both fraud prevention and

government revenue objectives. It is too early to predict the outcome of this ambitious and complex revision; but it is interesting to note that the intention is to create a "Code of Best Customs Practice" whose rules would evolve over time and whose implementation would be subject to supervision by the management committee of this new convention, including through mandatory application of all the Kyoto Convention Annexes to all its 142 Members.

22. In WTO, no similar provisions exist directly in the field of customs procedures, and there should be no attempt to duplicate the work undertaken in WCO and elsewhere. But a lot of efforts have been invested in a similar way, i.e. technical prescriptions and norms. Both the *TBT and the SPS Agreements* (as well as, to a lesser extent, the *Agreement on Rules of Origin*) contain a number of provisions on harmonisation and mutual recognition. They also address the problem of risk assessment and management: while acknowledging the legitimacy of differing national standards, these agreements try to prevent abuse of such differences.

23. The question arises whether, based on these rules and experience, either of the following approaches could further the objective of customs harmonisation:

- Adopting the Kyoto Convention and its annexes as well as other standards and recommendations as mandatory for WTO purposes similarly to the function of, say, the *Codex alimentarius* in the SPS Agreement.
- Examination of the risk assessment provisions established by the TBT and SPS Agreements and their potential utilisation in the field of risk assessment and management in customs procedures.

#### E. Standardised Information and Electronic Transmissions

24. Trade facilitation tools developed by UNCTAD, UN-ECE, ISO and others have considerably improved trading operations world-wide. The subject of standardised information and electronic transmission - in a process of constant evolution - definitely deserves to be included in the work on linking WTO with existing standards, along the lines of the EC's proposals (G/C/W/85, para 7).

### **Concluding Remarks**

#### Meeting of Experts

25. As outlined above (para 3) it is proposed to hold an informal, "brainstorm"-type meeting of experts, organised by the WTO Secretariat, where representatives from intergovernmental organisations such as WCO, UNCTAD, UN-ECE and IBRD and from non-governmental organisations such as ICC, FIATA, IATA and IECC would meet with representatives from WTO Members (i.e. trade as well as customs experts from capitals). Trade Facilitation is a technically highly complex subject. It involves most directly business operators in a great number of fields. Therefore it will be necessary to involve technical experts of international organisations, both governmental and non-governmental. Also, the question of how to ensure adequate communication between the Kyoto Revision process and WTO work should be addressed at that meeting.

26. The purpose of the meeting would be to make an assessment of the situation and collect suggestions for possible WTO action on Trade Facilitation, on the basis in particular of the Secretariat's analysis and the EC's and our proposals. Further background contributions by delegations would be welcome. The result of the meeting would be submitted to the Council for Trade in Goods.

### **Trade Facilitation: The Challenge of Ensuring Speed and Control**

27. While trade facilitation is in the interest of both traders and governments it should also be clearly understood that nothing in this field must be seen as easing the way for abuse and circumvention of national and international legislation and efforts to combat fraud. "No control" is perhaps equivalent to "facile trade", but it is not the purpose of "trade facilitation". The on-going revision of the Kyoto Convention is addressing this challenge of facilitating trade without impairing the attainment of legitimate governmental objectives and policies, in particular through its envisaged risk assessment and management procedure (see also above under "Harmonisation and Risk Assessment"). It is obvious that all trade facilitation work undertaken in WTO must follow the same, carefully designed approach of combining security and speed in international trade transactions.