

## TRADE FACILITATION<sup>1</sup>

### Trade Facilitation in relation to existing WTO Agreements

#### *Communication from the European Communities*

## I. INTRODUCTION

In previous submissions to the Council for Trade in Goods, the European Community has proposed developing a set of WTO rules to simplify trade procedures. The Community believes that a WTO initiative is the best means to provide both high level political impetus and the overall trade policy framework needed if we are to introduce globally, simplified procedures suited to today's international trade.

As we heard from the business community at the March 1998 trade facilitation symposium, considerable simplification of procedures could also be achieved in some existing WTO Agreements. This should be our starting point. Some of the Community's specific proposals<sup>2</sup> on trade facilitation, as well as proposals by other delegations may indeed apply to such WTO Agreements concerned with border crossing procedures. This is especially true of the Agreements on Import Licensing Procedures, Technical Barriers to Trade, SPS, Rules of Origin, and PSI. In particular, proposals on:

- reduction and Harmonization of Data and Documentation for import and export;
- modernising customs administration and methods;
- reducing separate interventions by different agencies: the "one stop" or "single window" approach; and
- automating import, export and customs procedures, including by use of EDI.

would logically apply to these Agreements, or can only achieve their aims fully if they do apply. One of the aims of this submission is to set out this.

A second aim of this submission is to identify the scope in some existing Agreements for further procedural or substantive improvements which would also be trade facilitating.

Finally, a framework of WTO rules on the simplification of trade procedures would have broader implications for certain Agreements: it would make the PSI Agreement less necessary, and the TRIPS Agreement function better. A legal framework to simplify procedures for goods trade would naturally improve the supply of trade in services, essentially transport and distribution services, thus generating indirect positive effects on the operation of the GATS. It would also strengthen the

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<sup>1</sup> For dissemination-related technical reasons, this communication could not be issued under the symbols of the relevant subsidiary bodies of the Goods Council. It is addressed to the Council for Trade in Goods, the Council of Trade in Services and the TRIPS Council as well as to those subsidiary bodies of the CTG which were invited to make a contribution to the Council's work on trade facilitation, i.e. the Committees on Customs Valuation, Import Licensing, Rules of Origin, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, and the Working Party on Preshipment Inspections.

<sup>2</sup> "Assessment of the Scope for WTO Rules in the Field of Import, Export Procedures" – submission to the Council for Trade in Goods G/C/W/122 dated 22 September 1998.

case to rationalise the existing resource intensive committee structure of the WTO. These issues are discussed below.

The Council for Trade in Goods' work programme on trade facilitation calls for contributions from different sub-groups and committees of the WTO. In line with this, many of the proposals in this submission have already been made by the EC in formal or informal meetings of the different Committees for each Agreement. The Community will make a separate submission on the development aspect of trade facilitation, elaborating on points made in the Committee on Trade and Development.

There follows a brief analysis of what WTO rules to simplify trade procedures would imply for existing Agreements.

## **II. THE AGREEMENT ON IMPORT LICENSING PROCEDURES**

The Agreement on Import Licensing Procedures exists to ensure that no additional procedural obstacles are created in administering import licensing policies. Its purpose is avoidance of unnecessary barriers rather than trade facilitation *per se*. However the existing Agreement does not provide for computerised or EDI-based procedures, does not ensure minimal or harmonised data or documentation requirements, nor cooperation between different regulatory agencies. Import licensing procedures could however be improved by making them part of an integrated set of simplified procedures, notably in the following ways:

- (i) data requirements should be the minimum necessary for effective controls, should be based on international standards, be aligned to data required for other control purposes, and be based as far as possible on commercially available information;
- (ii) licences should be processed in a way that does not require applications or submission of data to multiple agencies, i.e. the principle of a "single window": the agency processing the application should carry out any coordination with other agencies. This implies amending Article 1.6 of the Agreement which can require traders to apply to up to three agencies for a single licence;
- (iii) modern customs controls based on pre-arrival processing of data, post-import reconciliation, risk assessment, etc. should logically apply to controls of licensing documentation, and be administered by one and the same agency, normally the customs (principle of concentrating official controls in the hands of one agency); and
- (iv) licensing operations should be progressively automated, in order to increase speed and efficiency of processing, and to improve controls and reduce errors inherent in manual, paper based processes. Traders should have the option to use electronic means to apply for and receive licences.

Adoption of the above innovations, as a component of WTO rules to simplify trade procedures, would bring identifiable benefits for traders, through reduced costs and delays, and improve control capabilities of governments using import licensing, at lower cost. The EC would welcome further exploration of these ideas.

## **III. THE AGREEMENT ON PRESHIPMENT INSPECTION**

There is an international consensus that PSI is no substitute in the longer term for a properly functioning customs service. Although the advantages of PSI as an interim measure, and the benefits it can deliver for user countries are recognised, so also are its disadvantages. PSI services are expensive and may create delays for exporters and importers, have all too often not led to expected

improvements in tax collection, are unable to perform the integrated services expected of a functioning customs administration (e.g. statistical collection, multi-agency coordination), do not always apply modern customs procedures, based on use of information technology, including EDI, and have not as a rule facilitated the root-and-branch customs reform which is a virtual pre-requisite of their phasing out. The WCO, UN-ECE (which has prepared a recent recommendation on this subject) and the World Bank have all at various times drawn attention to such shortcomings.

The ultimate goal, as recognised by the WCO, the UN-ECE<sup>3</sup> and others, is the replacement of PSI by efficient customs administration. The European Community believes that to achieve this aim a comprehensive long term plan is needed, which could be supported by the WTO in the framework of an agreement on the simplification of trade procedures. It proposes the following:

- (a) establishment of such an agreement on simplification of trade procedures including data reduction and harmonisation, automation, and introduction of modern customs techniques based on the provisions of the WCO Kyoto Convention (see introduction, paragraph 2 above, and footnote 1). Adoption of such multilaterally agreed measures will make it easier for users of PSI to move away from it, having established clear alternatives routed in modern customs procedures that will increase efficiency, use resources better, improve control and revenue collection, and help trade flows;
- (b) an implementation plan for each PSI user country to move away from PSI arrangements. This may involve discussions with the different international agencies with a role to play, notably the WCO, the World Bank, UNCTAD and in some cases other specialised UN agencies and organisations such as the ICC. The assumption is that a coordinated approach covering the totality of a customs reform package is essential to achieve genuine reform, to mobilise resources and public and private donors, and to ensure high level political commitment on the part of the user country to reform both customs and ensure integration of other control agencies. As noted elsewhere in this submission, the EC will be making more detailed proposals on this aspect of development cooperation; and
- (c) in the interim, improvement where necessary to the functioning and use made of existing PSI services to ensure a seamless transition to the multilaterally agreed rules. This would include: progressive replacement of individual consignment inspection by selective inspection based on risk assessment methods; introduction of systems of ex post reconciliation of data held by the importing country with PSI-generated data; introduction of a voluntary PSI Agreement/Contract; ensuring that PSI companies' operations are progressively automated and standardised, and that information is provided to user countries to allow pre-arrival processing of imports and better coordination of information with other agencies; and introduction of valuation methods based on the WTO Customs Valuation Agreement within agreed or negotiated deadlines.

#### **IV. AGREEMENTS ON RULES OF ORIGIN AND CUSTOMS VALUATION**

The Agreement on Rules of Origin is focused on establishing disciplines and providing for a harmonisation process in relation to the substance of non-preferential rules of origin i.e. on origin criteria. This exercise, once completed, is intended to simplify and facilitate trade. The EC is among those WTO Members supporting a stocktaking exercise later this year to assess how far the results achieved in the harmonisation will genuinely be trade facilitating. We attach the highest importance to such a result.

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<sup>3</sup> UN-ECE CEFACT Recommendation on Preshipment Inspections, which proposes that PSI should be considered as a short term measure, be removed after five years at the outside, and in the meantime the WTO agreement be adhered to.

The Agreement however says relatively little on the questions of origin procedures and documentation requirements, and we need to see if here too improvements can be made. This is for two reasons. First, to avoid that the benefits of harmonisation are reduced due to the lack of common disciplines e.g. as regards: documentation requirements, procedures for obtaining and submitting proofs of origin and origin verification.

Secondly, origin verification is an integral part of customs administration. If WTO rules are to be developed to harmonise, simplify and automate customs procedures and trade data, then those rules should apply to origin documentation and control. Otherwise the benefits of simplified procedures may be lessened by unharmonized documentation, manual and paper-based processing of origin.

This objective could be aided by the progressive introduction to the origin field of a number of basic principles for trade facilitation already proposed by the EC in its submission of September 1998 (G/C/W/122). The EC considers that we could, in the future, explore whether proofs of origin could *inter alia*:

- be based on a harmonised documentation format ;
- be available in the exporting country from the same agency which is responsible for all other aspects of the export operation and submitted in the importing country to the same agency which is responsible for all other aspects of the import operation – in accordance with the "single window" principle;
- be machine readable and thus subject to EDI-based communication between exporter, importer and responsible government agencies;
- be subject to simplified procedures for authorised traders;
- be verified through audit and risk assessment techniques, rather than transaction based controls.

Measures along the above lines would speed up the transfer of essential trade information and increase transparency for traders. For customs it would form an essential part of its centralised control and management function vis-à-vis other government agencies. There would be scope, once the WTO harmonisation exercise is more advanced, for exploring, perhaps in conjunction with the WCO, how to develop further these areas.

As regards the Agreement on Customs Valuation, here there is probably less scope for innovation in the field of trade facilitation. The Agreement essentially establishes disciplines on the basis on which valuation for customs purposes are carried out. We can observe, however, that introduction of trade facilitation rules of the kind proposed by the EC would obviously improve the capacity of WTO Members to apply the Agreement properly:

- 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.
- 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.

## **V. AGREEMENTS ON TECHNICAL BARRIERS TO TRADE AND ON SPS**

The work programme on trade facilitation under the Council for Trade in Goods invites Members to identify the relevance of simplified trade procedures to existing WTO Agreements, including the TBT Agreement. In this section the EC makes some proposals to (a) develop further the

trade facilitation aspects of the TBT Agreement, and (b) link the TBT Agreement to proposals made in the Council for Trade in Goods to modernise and simplify import and customs procedures. The proposals apply, *mutatis mutandis*, to the SPS Agreement also.

### **Trade Facilitation Aspects of the TBT Agreement & the Recent Review**

Although an objective of the TBT Agreement is to facilitate trade flows, the traditional focus of the Agreement has been on ensuring that standards, technical regulations and conformity assessment procedures do not become unnecessary or disguised trade barriers.

More recently however, in the course of reviewing the Agreement, the EC and other Members have indicated interest in developing further its trade facilitation dimension in a more pro-active way. Specifically, the EC considers that the TBT Committee should increase its role in *stimulating recourse to International Standardisation* and to *recognition of equivalence of existing standards* when international harmonisation of standards does not proceed rapidly enough. It should actively *support de-regulation and good regulatory practice*, e.g. by resort to suppliers' declaration of conformity when a third party assessment is not absolutely necessary. Further development of the Agreement in these directions will simplify matters for traders, by increasing predictability and transparency of procedures and by reducing costs and delays in accessing markets.

### **Simplification of Procedures**

In addition to the above, certain proposals to simplify trade procedures made by the EC and other delegations in the CTG could also apply to measures taken under the TBT Agreement:

(a) Electronic means of administrating TBT Procedures

The trade and development benefits of automation and use of EDI in import, export and customs administration have been described above. To maximise benefits of automation, however, it should, ultimately, be introduced across all aspects of the trade/government interface, including the regulatory interface, and not just customs. If this does not happen then the gains expected from e.g. computerised procedures for customs processing and goods release can be reduced if consignment-based, physical and paper-based procedures continue to govern other forms of administrative intervention.

As far as TBT-related issues are concerned, the ultimate aim should be for Members to enable traders to access electronically information on standards and regulatory requirements, and to use EDI means in the regulatory/conformity assessment process. Information transmitted to customs and other agencies electronically and in advance of goods arriving should include necessary data on product compliance. This will speed up the regulatory process, increase transparency, and enable faster release upon import of goods subject to regulatory requirements.

The EC has proposed that in a possible future agreement on simplified trade procedures, use of electronic means could progressively be introduced within Members' administrations, including those agencies involved in regulatory matters. Such a provision would apply *inter alia* to procedures carried out pursuant to the TBT Agreement.

(b) Concentration of official controls in the hands of one government agency

Lack of coordination of different agencies concerned with import and export, and the resulting requirement to subject cargoes to multiple checks at different times and places, has been cited by traders as a major concern. In view of the multiplication of regulatory controls worldwide, some rationalisation of procedural aspects of such controls is essential to improve trade flows, while

IT-based means of information exchange between traders and government and between government agencies makes it more feasible.

The EC has in two broad areas suggested measures to streamline official controls by different agencies, including agencies whose operations fall under the TBT Agreement. First, the principle that submission of data or other information requirements either at export or import be one time only and to a single agency (normally customs or a trade department), which will then ensure onward transmission of data to other relevant agencies, and interagency coordination thereafter. EDI is obviously an important element in the functioning of such arrangements.

Second, related provisions to ensure, notably at import, that goods entering a country are subject only to a single (if at all) intervention, normally by customs on behalf of other agencies. In other words, administrations would ensure, over time, a level of coordination and delegation of controls to customs to enable all verifications (e.g. health and safety data and certification, sanction controls, IPR verification, import licence checks, export subsidy verification) to be done once only and in one place. The aim should be to set a norm of such integration, subject of course to exceptions where customs may not be qualified to carry out specific expert functions. Clearly, agencies operating health, safety and environmental checks on goods entering the ports would be part of such coordinated procedures.

The benefits of working towards such systems are manifold. Trade and transport interests benefit in terms of reduced delay and cost from a one stop procedure that fits to their commercial rhythms and needs, and allows them to organise their compliance and cooperation much more efficiently, while the use of a single interface with the administration makes it easier for traders to align their computer networks with the receiving agency. Administrations benefit through the optimal use of their resources and personnel, and through improving control levels and results.

To conclude, the EC sees several areas where simplified trade procedures could be relevant to the TBT Agreement and if applied would reduce costs and delays for traders while maintaining and evening improving controls and compliance. The same set of proposals would also apply, *mutatis mutandis*, to the SPS Agreement. The EC believes these issues could be explored further in a new trade round, as part of a broader initiative on trade facilitation or within the TBT Agreement proper.

## **VI. AGREEMENT ON TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS**

Much of the discussion on trade facilitation in the Council for Trade in Goods has been on customs issues, notably on the scope for rules to modernise and improve customs rules and procedures to facilitate legitimate border-crossing trade. The Community, among others, has proposed that any future WTO rules should include commitments to introduce modern customs procedures 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 authorised traders with a known compliance record, automated transfer of data from importers to customs administrations and so on.

### **The TRIPS dimension**

In the TRIPS field customs reform is relevant. Modern, simplified procedures based on risk assessment and profiling not only facilitate legitimate trade but also permit improvements in control and compliance levels. The WTO March Symposium heard several examples from developed and developing countries of how simplifying and modernising customs procedures both benefited bona fide traders and improved border control and enforcement, allowing customs administrations to increase collection of import taxes. The World Customs Organisation, in its own Customs Reform and

Modernisation programme, recognises the positive relationship between trade facilitation, trader compliance and improved controls, including controls on goods subject to IPRs.

A recurrent concern of some WTO Members in the TRIPS Council has been over how to ensure compliance with the border enforcement provisions of the TRIPS Agreement against a background of static or dwindling resources, and ever-increasing trade flows. Introduction of modern, trade facilitating customs techniques - such as those introduced by several Latin American countries recently - enables 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. Experience demonstrates that any additional resources needed for training and reorganisation of customs can be recouped quite rapidly through higher rates of revenue/duty collection, and efficiency gains.

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 modernise 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 the much needed momentum for customs modernisation and reform.

## **VII. INSTITUTIONAL QUESTIONS**

As can be seen from the foregoing, provisions in many existing WTO Agreements are closely related and will become even more closely linked under any future WTO initiative or agreement on trade facilitation. The Agreements on Import Licensing, Rules of Origin, Customs Valuation and PSI constitute in particular a cluster of disciplines governing specific aspects of import control. At present they are considered as discrete and separate instruments rather than integral parts of an overall control process. A future agreement on trade facilitation could help ensure that each Agreement operates as part of a coherent process, subject to harmonised documents, procedures and standards.

The EC sees merit, within an overall initiative on trade facilitation, in ensuring that separate Committees currently managing these four Agreements, work more closely together. At the very least we should ensure they meet back to back with each other, to enhance coherence and synergy between them, particularly if in future broader rules on simplified procedures apply. Such an arrangement would also respond to a real concern of developing countries who lack resources to participate in an ever growing number of WTO groups and committees. Bringing the Committees closer together would use up less time and allow the participation of capital-based experts, thus freeing resources of Geneva-based missions.

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