

# WORLD TRADE ORGANIZATION

RESTRICTED

G/C/W/363  
12 April 2002

(02-2082)

Council for Trade in Goods

Original: English

## TRADE FACILITATION: ARTICLE X OF GATT ON THE PUBLICATION AND ADMINISTRATION OF TRADE REGULATIONS

### Communication from the European Communities

The following communication, dated 12 April 2002, has been received from the Permanent Mission of the European Communities.

#### **Introduction**

Transparency is a cornerstone of the multilateral system. Without transparency of trade rules and trade policy, other fundamental principles of non-discrimination, proportionality, and special and differential treatment are of less practical use, the value of Members' liberalisation commitments may remain theoretical, and Members' rights and obligations cannot be properly exercised.

At a very practical level, traders need full knowledge of other Members' trade rules and practices in order to take advantage of the trade benefits conferred by Members' WTO commitments. Complete, simple and easily accessible information is especially important for SMEs to do business. Transparency also renders governments more accountable and in doing so encourages more efficient and business-friendly design and administration of trade policy, while reducing trade conflicts. Transparency and predictability in the application of trade regulations and procedures are, ultimately, an important aid to development.

The Doha Declaration mandates Members to "review and, as appropriate, clarify and improve", by the fifth ministerial conference, relevant aspects of GATT Article X on the Publication and Administration of Trade Regulations. This Article has stood unchanged since the 1940's, but some of its concepts – concerning for example transparency, advance notice of proposed trade rules, and right of appeal against administrative decisions have since been developed further in the national regimes of some Members, in specific Marrakech Agreements on trade in goods, or in other international instruments. Modern principles of sound and transparent public administration have, in other words, overtaken GATT Article X since it was first negotiated.

The European Communities therefore suggest that, taking in account what has been found useful in other WTO Agreements and elsewhere, the following improvements and clarifications to GATT Article X be considered, as part of a set of future WTO commitments on trade facilitation. The EC has divided these improvements into four categories: publication and availability of information; predictability of measures; appeal and due process measures; and Special and Differential Treatment, including technical assistance.

The improvements proposed would also apply, where appropriate, to subfederal and local authorities who may have responsibilities for the requirements and procedures in place affecting the movement of goods across borders.

## A. Publication and Availability of Information

1. All **relevant laws, regulations, administrative guidelines**, specific decisions of or having general application, information on customs and other agency processes, conditions and qualifications for different forms of customs treatment<sup>1</sup>, right of appeal procedures, fees and charges, port, airport and other entry-point procedures etc, relating to **border crossing** trade, should be published and made easily available via an officially designated medium, (including in electronic form) and accessible to any interested party on a non-discriminatory basis. All amendments thereto should be made public in the same way. Any fees charged for the provision of information to interested parties should be commensurate with the cost of providing that service. The information to be made public could include also details of customs' and other government agencies' **management plans** relating to implementation of WTO commitments, or of their relevant reform and modernisation programmes, including for example targets, deadlines and benchmarks set in such programmes.

*Comments: this expands slightly the current scope of the information required to be published under GATT Article X to reflect the needs of today's trade. Experience demonstrates that information of this nature is necessary both to assist traders in day to day management of their transactions, but also to encourage a co-operative and trustful relationship between the trading community and customs and other public administrations. This is a priority need for SMEs, whose capacity to trade can be greatly improved by access to such information.*

2. Information made public could also include relevant **advance rulings**, notably binding rulings on classification and origin, provided confidentiality and commercial secrecy is respected. Provision is needed whereby binding rulings can be revoked at any time if made pursuant to false, incorrect or incomplete information, but otherwise not with retroactive effect or without prior information of interested/affected parties.

*Comment: the WTO Agreement on rules of origin requires Members to provide rulings on origin. Again, such information is of use to traders.*

3. Information should be presented in a **simple and accessible** manner and not designed to discriminate or make it inaccessible or difficult for non-national operators to access.

*Comment: this is recommended, inter alia by the WCO in respect of customs related information. We note further that provisions on use of internationally agreed standards, data sets etc, and commitments to reduce and simplify official requirements to the very minimum will help to achieve simplicity in information because there will be less information to provide and it will be in a more standard, familiar format. The EC will address this in a future communication. Legislation, regulations and administrative guidelines made generally available using new technology will generally meet this standard.*

4. Members could confirm their commitment only to take administrative actions, decisions or rulings affecting importers or exporters where a **legal basis** to do so is established.

*Comments: the purpose of this is in order to reduce the scope for arbitrary decision making on the part of the public authorities.*

---

<sup>1</sup> For example, MoU's between customs and operators, criteria for authorised trader status

5. **Enquiry points or trade desks** providing information on all the above should be established for use of governments and traders on a non-discriminatory basis, and notified to the WTO secretariat.

*Comments: this is a familiar provision in certain WTO Agreements such as TBT and SPS, but there is no provision in Article X for enquiry points for general customs and other agency requirements relating to trade in goods. It is noted that in many cases such enquiry points either already exist or are being provided via technical assistance programmes. Where they do not exist, the provision of such enquiry points, and the assembly of all the necessary information on the laws and regulations of the Member in question, could be a priority for technical assistance in the field of trade facilitation. In addition to ensuring the creation of information points by WTO-members, members could consider the possibility of establishing, on the basis of the information notified by WTO members to the WTO, a publicly accessible (via the Internet) WTO database of the countries requirements identified in this section. The EU has some experience in putting together databases in relation to the import and export procedures that traders might encounter around the world and would be interested in discussing further with WTO-members the scope for this possibility.*

## **B. Predictability via Prior Consultation & Minimum Time Periods before entry into force etc**

6. It would be useful to establish a provision for **consultation between interested parties**, both governments and private sector, on proposed new legislation, regulations and other procedures affecting import and export administration, before formal adoption or entry into force. The scope of any such provision should be further discussed. This could be extended to include a requirement to establish a **regular consultative mechanism** with representative private sector bodies including importers, exporters, carriers, chambers of commerce, relating to new or revised laws and regulations, and to major changes in operating procedures, particularly where these are in legislative form.

*Comments: the relevant WCO Kyoto Convention Standard could be indicated as a preferred means to implement this commitment. A provision on these lines is useful both for administrations and traders in order to ensure sensible regulation, co-operation, mutual trust and high levels of compliance on the part of trade.*

7. **Standard, and adequate time periods** to be provided for comment, and between adoption and entry into force of regulations, to allow trade to adjust.

*Comments: this is already provided for e.g. in the context of the TBT and SPS Agreements, and there is no reason why the concept could not be applied more widely to customs and other related import or export requirements.*

8. Notice of proposed regulations etc on which comments invited could be accompanied by publication of the **reasoned motivations for a proposed measure** in relation to the policy objectives sought, the availability of other, possibly less trade restrictive measures etc. A commitment could be considered whereby the primary legislation would be reviewed, and as necessary codified or consolidated at reasonable intervals in order to ensure it remains up to date and so as to ensure efficiency in the information process.

*Comments: commitments along these lines are also found in specific WTO agreements. They will be made more operational if accompanied by a requirement that regulations be proportionate to the objectives sought and that the objectives sought should be legitimate ones. The EC will address these issues in a subsequent communication to the WTO.*

### C. Appeal Procedures and Due Process

9. There should be a **non discriminatory, legal right of appeal** against customs and other agency rulings and decisions, initially to a higher authority within the same agency or another body, and subsequently to a separate judicial or administrative body. Appeal procedures, and standard times and conditions for appeal should be made publicly available. A standard time should be set for resolution of minor appeals at administrative level. Procedures for appeal should be easily accessible, including to SMEs, and costs should be reasonable and commensurate with costs in providing for the appeals.

*Comments: this builds on existing provisions in GATT Article X. Future WTO commitments could specify that implementation of the substance of the relevant provisions of the WCO Kyoto Convention (General Annex, Chapter 10 and accompanying Guidelines) would be deemed to fulfil these requirements, as far as customs rulings are concerned.*

10. Appeal procedures should also be available in respect of decisions relating to goods in transit and exports, as well as imports. Companies should have right to be represented at all stages of appeal procedure by an agent or legal representative.

*Comments: transit operators' and exporters' interests are not necessarily guaranteed by national treatment provisions, which is why the right of appeal should apply also to them. SMEs need the facility of being represented by an agent since small companies cannot always spare their managers to be absent to pursue appeals/complaints - a point well made by the ICC in its Customs Guidelines.*

11. Goods should normally be released, and the possibility be available in given circumstances for duty payment to be left in abeyance, pending outcome of appeal, subject, where required by national legislation, to the payment of a surety, guarantee or other form of bond.

*Comments: this would act as a disincentive to drawn out appeal procedures, and ensure that trade is not unduly affected pending the outcome of appeal procedures. The Customs Valuation Agreement requires all WTO Members to make provision for goods release in the event of delays in the determination of customs value, so it should be feasible to extend this to other aspects of agency determinations. There could not however be an unfettered right of release of goods pending the outcome of the appeal, since this would unduly reduce the enforcement ability of customs or other agencies.*

### D. Special and Differential Treatment, including technical assistance

12. The above proposals, however desirable in themselves, may in some cases justify the provision of technical assistance for some developing countries, who lack resources to implement them, or who may need time to introduce changes. For these reasons it is important that Members provide **Technical Assistance** to assist developing countries, especially least developed, to establish requisite information platforms, particularly in electronic format, in order to fulfil transparency requirements. Where necessary, assistance may also be provided to support the implementation of other commitments that Members may enter into based on the above proposals. The possible scope and nature of, special and differential treatment provisions for, in particular, the least developed countries, also needs further discussion.

*Comments: as noted in proposal 5 on enquiry points, measures to improve transparency and predictability have been a traditional focus of trade related technical assistance, since they are relatively straightforward to implement yet constitute the basis for other improvements in*

*Members' trade regimes. Assistance to transparency is often provided through the creation of databases and enquiry points for traders, in particular SMEs. Many Members already operate specific systems, such as trade points, or investment desks, which demonstrate the feasibility of introducing such facilities. The EC regards this as a useful component of trade related assistance in the short to medium term and will endeavour to address this in its bilateral technical assistance programmes.*

More generally, the issue of how to integrate the technical assistance/capacity building dimension in the final result of the process on trade facilitation needs to be considered in depth, taking into account the sum of trade facilitation commitments that WTO members will take on. The EC has already presented its views on this in previous submissions to the Council on Trade in goods, as well as in its presentation to the May 2001 Workshop on Technical Assistance and will review these ideas and present a further submission in due course.

---