



**DISCUSSION PAPER ON THE INCLUSION OF PRE-SHIPMENT INSPECTION
IN THE NEGOTIATIONS ON TRADE FACILITATION**

COMMUNICATION FROM ANGOLA AND EGYPT

The following communication, dated 6 February 2013, is being circulated at the request of the delegations of Angola and Egypt for consideration by the Negotiating Group on Trade Facilitation.

1 INTRODUCTION

1.1. This communication has been presented in order to better explain the concerns of the proponents regarding Article 10.6 of the Draft Consolidated Negotiating Text (TN/TF/W/165/Rev.14) on pre-shipment inspection.

1.1 Background

1.2. The concept of eliminating pre-shipment inspection first appeared in the Trade Facilitation Agenda in Communication TN/TF/W/46 dated on 9 June 2005 by the Delegations of the European Communities. This was followed by revised proposals from the Delegation of the European Communities and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu in Communications TN/TF/W/90 dated 4 April 2006 and TN/TF/W/108 dated 6 June 2006. This proposal was widely discussed within the Negotiating Group on Trade Facilitation and on bilateral consultations with interested Members. During these discussions, certain delegations expressed their concerns on the contradiction between this proposal and the Agreement on Pre-shipment Inspection which is one of the gains of developing countries from the Uruguay Round. These delegations questioned the relevance of this proposal to the mandate of the negotiations.

1.2 The Issue

1.3. The negotiations on Trade Facilitation aims to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit.

1.4. The proponents of this Communication believe that Article 10.6 of the Draft Consolidated Negotiating Text (TN/TF/W/165/Rev.14), which proposes the elimination of pre-shipment inspection, fall beyond the scope of the mandate of the negotiations on Trade Facilitation for the following reasons:

- a. The activities related to the inspections of goods when carried out on the territory of an exporting Member are subject to a separate multilateral agreement of Annex 1A to the Agreement Establishing the World Trade Organization Agreements, which is the Agreement on Pre-shipment Inspection (PSI). The proponents of this Communication did not find any intent on the mandate of the NGTF to amend or to terminate the operation of the Agreement on PSI.

- b. The proponents of this Communication can find only one mandate related to the Agreement on PSI. This can be found in Annex C to the draft Cancún Ministerial Text, and this aims to better activate Article 3.3 of the Agreement on technical assistance.
- c. Pursuant to the Agreement on PSI, any modification to the agreement must be on the basis of a ministerial decision, as prescribed in Article 6 which stipulates that *"(...) the Ministerial Conference shall review the provisions, the implementation and the operation of this agreement, taking into account the objectives and experience gained in its operation. At the result of such review, the Ministerial Conference may amend the provisions of the agreement"*.
- d. The last Review under Article 6 of the Agreement on PSI was carried out in the Committee on Customs Valuation at its 6 October 2006 meeting. The Committee noted that no submissions were received from any Member during the Review. With the absence of such contributions, the Review was concluded without any recommendations.
- e. During the TF negotiations, some delegations argued that Article 10.6 of the Draft Consolidated Negotiating Text (TN/TF/W/165/Rev.14) fits under the mandate to clarify and improve GATT Article VIII and more specifically paragraph 4(g). The proponents of this Communication believe that the mention of "analysis and inspections" in Article VIII paragraph 4(g) refers to these activities when realized in the territory of the Member importing the goods, whereas the Agreement on PSI refers to these activities when realized in the territory of another Member (Article 2.3 on site of inspection).
- f. Moreover, the general interpretative note to Annex 1A indicates that *"In the event of conflict between a provision of GATT 1994 and a provision of another Agreement in Annex 1A to the Agreement Establishing the WTO, the provision of the other agreement shall prevail to the extent of the conflict"*. In this context, any modification brought to the activities of Pre-shipment Inspection shall be valid only if it is made to the Agreement on PSI. The proposal submitted by the European Communities and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu does not make any modification to the Agreement on PSI, because such modification would not be on line with the negotiating mandate of the Doha Round.
- g. Moreover, WTO Members recognized the need of developing countries to have recourse to pre-shipment inspection as to verify the quality, quantity, customs classification or price of imported goods. The note submitted by the Secretariat to the Committee on Customs Valuation on the situation with regard to countries using pre-shipment inspection (PSI) regimes in June 2012 shows that a number of developing countries and LDCs are still relying on pre-shipment inspection.

2 CONCLUSION

2.1. In this context, the proponents of the current communication are of the view that the proposed Article 10.6 of the Draft Consolidated Negotiating Text (TN/TF/W/165/Rev.14) on pre-shipment inspection does not fall in the mandate of the negotiations on trade facilitation, forfeits the rights of developing countries and LDCs in the special and deferential treatment that they gained in the Agreement on PSI, and obviously conflicts with the preamble of the Agreement, as well as with Article 6 on the procedures that must be followed in order to review or amend it.

2.2. Under these circumstances, the proponents kindly request that Article 10.6 on pre-shipment inspection to be dropped from the Draft Consolidated Negotiating Text (TN/TF/W/165/Rev.14).
