

COMMUNICATION FROM THE EUROPEAN COMMUNITIES

The following communication, dated 8 June 2005, from the Delegation of the European Communities, is being circulated in advance of the Negotiating Group meeting of 13-14 June.

**IMPROVEMENTS TO GATT ARTICLE VIII ON FORMALITIES AND
REQUIREMENTS CONNECTED WITH IMPORTATION AND EXPORTATION
AND RELATED PROPOSALS ON SPECIAL AND DIFFERENTIAL TREATMENT
AND TECHNICAL ASSISTANCE**

EXECUTIVE SUMMARY

This submission is in two parts. First, it sets out why and how GATT Article VIII could be improved and made more operational in order to simplify international trade procedures. Secondly, it addresses the future modalities for addressing related special and differential treatment and technical assistance. The proposals in the submission cover:

PART 1: Proposals to Make GATT Article VIII More Operational

- **General commitments reflecting WTO principles:**
 - (1) Non-discrimination
 - (2) Avoidance of unnecessary barriers to trade
 - (3) Periodic review of procedures and requirements
 - (4) Use of international standards

- **Provisions relating to document and data formalities:**
 - (5) Simplification and reduction of documentation and data requirements
 - (6) Introduction of a uniform customs code or aligned customs legislation
 - (7) Single, one-time presentation of all documents and data requirements, to the extent possible

- **Provisions relating to customs and related import and export procedures:**
 - (8) Simplified and standardised procedures and standard processing times
 - (9) Non-discrimination in relation to modes of transportation
 - (10) Phasing out mandatory use of customs brokers
 - (11) Simplified customs release and clearance procedures
 - (12) Use of Risk analysis and introduction of authorised trader systems
 - (13) Convergence and co-ordination of official controls

- (14) Application of objective criteria for tariff classification
- (15) Elimination of pre-shipment inspection

Proposals on GATT Article VIII provisions on fees and charges have been treated in an earlier submission from the EC and Australia (ref. TN/TF/W/23 of 18 March 2005).

PART 2: Special and differential treatment and technical assistance

These proposals are for their part aimed at ensuring that developing countries are helped in implementing progressively any commitments that, however beneficial *per se*, need time or resources. Specific ideas are put forward for (1) targeted special and differential treatment, (2) transitional periods and (3) technical assistance and capacity building measures.

I. INTRODUCTION

1. The WTO's work on Trade Facilitation in the last few years has led to agreement on the benefits of measures to simplify import and export procedures. Members have stressed the importance of trade facilitation in increasing their capacity to trade and better integrate into the international economy, and recognized the complementary nature of facilitation measures and the improvement of border controls and revenue collection. The business community – large companies and SMEs, traders in both developed and developing regions, and representatives of both goods and services sectors – have all emphasized the need to simplify trade procedures so as to reduce costs and delays, as well as to improve the investment climate. Small traders are in a particularly strong position to benefit from facilitation measures, since excessive data and documentation requirements or burdensome border procedures impose on them disproportionate manpower and resource demands, and act as a fixed cost regardless of trade volumes. The benefits for governments of simpler procedures are also considerable: trade facilitation enables cost savings, greater efficiency of border management, and higher rates of revenue collection.

2. Article VIII is quite broad in scope, extending to all fees and charges of whatever character, formalities as well as requirements imposed by governments in relation to importation and exportation. In other words it is not limited simply to procedures but also to requirements applied by governments to trade transactions. Yet, despite this broad scope, GATT Article VIII is not fully operational. While Article VIII:1(c) recognises the **need for** minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements, it does not **require** any such reduction nor indicates how to achieve it. The absence of any operational WTO requirements to simplify or reduce formalities – notably unjustifiably burdensome customs procedures – remains a significant weakness in the WTO rule book which, as tariffs are progressively reduced, has become more and more in need of attention.

3. The EC therefore proposes to clarify and improve GATT Article VIII to make it more effective and operational in the same way that, in recent years, Members have made more specific and operational GATT Articles and provisions relating, for example, to customs valuation, import licensing and technical barriers to trade. The trading community and many Members are keen to see the establishment of a set of WTO provisions on GATT Article VIII that would set all WTO Members on an agreed path of modern and simplified procedures, taking full account of international standards and work done in other international organizations.

4. In making proposals, the EC seeks to ensure that basic GATT principles are applied to trade facilitation, that any measures proposed restrict trade as little as possible – without obviously in any way affecting the right of Members to achieve other legitimate policy objectives, related for example to national security, health, safety and the environment – and that as far as possible the standards drawn up by other international organizations are used.

PART 1: PROPOSALS TO MAKE GATT ARTICLE VIII MORE OPERATIONAL

A. SUGGESTED GENERAL COMMITMENTS

1. **Non discrimination** in the design, application and effect of export and import procedures and formalities imposed on the goods of all Members.

Comments: The applicability of GATT Article I to all import and export formalities may be worth underlining, as is the case in for example the TBT Agreement, the Agreement on Import Licensing Procedures and other similar sets of WTO rules. The principle of non-discrimination should not of course interfere with Members' rights to treat consignments differently according to objective risk assessment criteria.

2. Avoidance of **unnecessary barriers** to trade in the design, application and effect of import and export procedures, and in particular to ensure that such procedures do not unduly slow down the movement or release of goods. This would be done by ensuring that import and export procedures shall not be more trade restrictive than necessary to fulfil legitimate objectives.

Comments: A basic discipline to ensure that regulatory authorities – customs etc. – consciously make efforts to design and implement procedures that are in proportion to the objectives sought, that take account of the needs of traders, and that facilitate trade as far as possible.

3. **Periodic Review.** A provision whereby Members should no longer maintain a procedure or requirement if the circumstances giving rise to its introduction no longer exist or if the changed circumstances or objectives can be addressed in a less trade restrictive manner.

Comments: A commitment modelled on already existing provisions in e.g., the TBT Agreement, that requires public authorities regularly to review their regulations with a view to introducing better and less burdensome practice.

4. Use of relevant **International Standards and Instruments.** Members should agree to use international standards and instruments as the basis for their import and export procedures and requirements, except where such international standards would be an ineffective or inappropriate means to fulfil the legitimate objectives sought.

Comments: Use of international standards ensures a common basis for the measures applied by different WTO members, which in turn improves transparency and predictability, and lowers costs for traders for example in preparation of trade documents and data. Obviously, if each Member or regional grouping were to introduce their own (varying) standards, the result would be a proliferation of incompatible requirements in different markets, adding to traders' costs. It will be desirable to identify and agree which international standards and instruments should be referred to, the circumstances and on what basis Members can deviate from them, and to decide how to take account of subsequent amendment or updating of such standards and instruments.

B. SUGGESTED PROVISIONS ON DATA AND DOCUMENTARY REQUIREMENTS

Excessive and non-standardized documentation and data requirements for border crossing trade are, according to representatives of the trade community, an important obstacle to trade. Small- and medium-sized companies are particularly affected by unduly burdensome procedures, since they drain manpower and resources which SMEs cannot afford to give up. Evidence suggests that excessive export procedures are as troublesome and costly as excessive import bureaucracy. Many such requirements – which have accrued over time – are unnecessary and can be simplified and reduced. One could therefore consider a number of ways to make these requirements more focussed

and simple and in so doing create a more hospitable climate for international trade. In particular, there would be merit in improving GATT Article VIII by commitments such as the following:

5. Commitment by Members to **simplify and reduce documentation and data requirements to the absolute minimum**, consistent with the need to enforce legitimate policies, and in doing so to use international standards as a basis for documentation and data requirements (both for format and content of documents and data). The data set developed within the WCO data model, UN EDIFACT (UN Electronic Data Interchange for Administration, Commerce and Transport) and the UN Layout Key could be identified as basic reference points/standards in this regard, and WTO Members may wish to identify others. Further simplification could also be achieved where WTO Members identify the cases in which copies and not originals of documents are accepted. Simplification could also be served by permitting the acceptance routinely of relevant commercially-available information.

Comments: Through the above proposal Members would make a commitment to begin to simplify procedures, basing their domestic efforts on the international instruments of the WCO and UN and possibly other bodies.

6. Introduction by each WTO Member, or customs union (between two or more Members), of a **uniform customs code** or aligned customs legislation, as well as a single import and export declaration, administrative message or data set.

Comments: It is essential for transparency, and for efficient administration of customs to have a coherent body of legislation, regulations etc. Traders are keen to have simple, standardized documents or data sets, as this reduces errors and processing times.

7. Progressive implementation of the principle of a **single, one-time presentation to one agency, normally the customs**, of all documentation and data requirements for export or import, subject to any exceptions to be identified. This should be a best endeavour provision and the commitment would be to making progressive efforts, rather than to any fixed deadline.

Comments: The concept of a Single Window for filing of data/documents is an important facilitation measure, enabling traders to avoid multiple and time-consuming procedures, but flexibility will be needed – especially for some developing countries since Single Window operations, however desirable, take time to implement.

C. SUGGESTED PROVISIONS ON CUSTOMS AND RELATED IMPORT AND EXPORT PROCEDURES

Cumbersome border crossing procedures act as a brake on trade and investment, and hamper exports as well as imports, in particular for small-and medium-sized companies. Simplification of trade formalities and requirements is an important and low-cost way to improve trade and investment flows. It has also been shown to result in higher revenue collection rates, better enforcement of border controls, and greater efficiency and morale of customs administrations. The EC proposes, therefore, the establishment of a number of commitments to simplify import and export procedures, which would be applicable to all Members. These commitments would make GATT Article VIII:1(c) – which calls for the simplification of procedures – more operational. The provisions proposed below would again steer WTO Members in a common direction, through the progressive adoption of simpler and more internationally-standardized procedures drawing on good administrative practices gaining currency worldwide. The following proposals are therefore made:

8. Progressive implementation of **simplified and standardized import and export procedures**, based on international standards and instruments, including the WCO Kyoto Convention. As part of such a provision, the EC proposes that each Member would establish and agree progressively to reduce, its domestic **standard processing times** for goods release and clearance, based on a common instrument such as the WCO Time Release Study.

Comments: The EC does not think that Members should be bound via WTO formally to adhere to instruments (such as the Kyoto Convention) negotiated elsewhere, but suggests that such instruments be implemented in substance or be given a privileged status, as is the case with standards in other WTO agreements. Standard processing times can function as useful benchmarks. Publication of standard processing times would ensure that such times are in the first place established, and then efforts made to reduce them. Relatively high risk consignments would naturally tend to have longer processing times than the standard.

9. A commitment to non-discrimination in terms of requirements and procedures applicable to like products irrespective of their **mode of transportation**.

Comments: Procedures for different modes of transportation are unlikely to be identical but they should not give rise to discriminatory treatment.

10. Non-discriminatory rules should apply in respect of licensing of customs brokers, together with an undertaking to phase out over time any requirements for the mandatory use of **customs brokers**.

Comments: Regarding customs brokers, in many countries they perform the all important role of interface, between the trader and the administration, particularly for SMEs. There is, however, concern from traders over the role and influence of brokers and the fact that in many countries their use is mandatory. Licensing of brokers should be carried out transparently and fairly, so as to enable competition, and companies should, if they prefer, be able to manage the transaction themselves.

11. A commitment by each member to introduce **simplified customs release and clearance procedures** including the possibility of: pre-arrival processing of documentation; rapid release procedures based, for example, on the submission of a simplified document and mechanisms for post-release reconciliation of documentation and duties payable; the possibility of customs clearance or relevant export control at an importer's or exporter's premises; and the possibility of periodical audit and duty payment rather than duty payment on the basis of individual transactions.

Comments: Regarding simplified release and clearance procedures, most WTO Members are now starting to operate different forms of simplified procedure. Given the economic importance of such procedures, it seems to the EC essential that they be reflected in terms of WTO commitments so as to reduce costs and delays and bring greater predictability to traders, although without being too prescriptive. Simplified procedures do not necessarily require computerized customs systems although in some cases this makes them easier to operate. Having said this, customs automation is an important facilitation tool, aiding, in particular, higher rates of tariff collection and enforcement, the implementation of simplified release procedures delinked from duty payments, and the coordination of official controls. Almost all developing countries have in the past few years introduced automation (e.g., using UNCTAD's ASYCUDA programmes), increasing efficiency and trade flows, and rapidly recouping investments.

12. Use of **risk analysis** methods based, as appropriate, on relevant international standards and practices. Risk analysis procedures should not be used as, or have the effect of creating, disguised obstacles to trade. They should be objective and applied for legitimate purposes. In addition, it would be useful if Members were to make a commitment to introduce systems of **authorised traders**, using transparent, objective and non-discriminatory criteria. Such systems should not exclude the participation of small- and medium-sized enterprises.

Comments: In practice no WTO Member can physically inspect 100% of all consignments and should not. Risk analysis procedures allow customs etc to concentrate their limited resources on targeting the most suspect shipments while facilitating trade for compliant traders. As trade flows expand but customs' resources shrink or remain static, such selectivity becomes even more essential. The proposal on authorized traders would encourage all Members to implement procedures that identify and reward efficient and compliant traders with additional facilitation measures. Given that so far such arrangements are being mainly used by larger companies, it seems crucial to us to ensure that such systems be equally available to (equally compliant and trustworthy) smaller traders.

13. **Convergence of official controls** in a "one-stop shop". Where documentary or physical verification of consignments by more than one agency is necessary this should be carried out at a single place and one time only, to the extent possible, and at hours that meet the needs of traders.

Comments: A major concern of traders relates to excessive delays in getting goods released due to the absence of coordinated border controls between different agencies within a Member. Developing countries have drawn attention to the incidence of multiple inspections for different control purposes in their major export markets. The EC believes that Members should make a commitment, towards greater coordination of controls, recognising that developed countries must lead the way here, and that for developing countries this may take some time to accomplish.

14. Requirement to apply **objective criteria for tariff classification of goods**.

Comments: This could be achieved through the use for all trade by all Members of the WCO HS Convention: a further international standard.

15. Elimination of **Pre-Shipment Inspection Arrangements**.

Comments: Official PSI systems impose considerable burdens on business and are costly to governments. Experience suggests that in some cases, far from being a temporary measure pending improvements to domestic customs services, they are tending to become a semi-permanent alternative. The EC suggests that Members set a deadline for the elimination of PSI where it substitutes for functioning customs services, and use the time available to ensure that the domestic customs administrations become more fully functional and PSI progressively phased out. The EC also suggests that during the transition period Members commit not to introduce new PSI arrangements.

PART 2: SPECIAL AND DIFFERENTIAL TREATMENT AND COORDINATION OF TECHNICAL ASSISTANCE

The biggest long term beneficiaries of simplified procedures should be developing countries, whose future trading performance and attractiveness to foreign investment will improve if they can provide and maintain a simple, transparent trading environment. By entering into commitments, developing countries can go a long way towards promoting their integration in the global trading system. Failure to do so can have the opposite effect. Currently it is their typically small- and medium-sized enterprises which suffer more from burdensome export and import procedures and non-transparent and excessive duties and taxes. Simplification can go a long way in facilitating South-South trade, as well as helping North-South trade. However, simplification cannot be achieved overnight and any provisions on GATT Article VIII should recognize the needs and difficulties faced by developing countries, especially the least developed, and provide practical means to assist their development.

Taking in account the views expressed on this issue over the last three years, the EC suggests that any future WTO provisions should therefore include a range of special and differential treatment provisions, including less onerous commitments for poorer developing countries, transitional periods for the assumption of commitments, and provisions regarding improvements in the supply of technical assistance. Each of these elements is set out below.

1. Targeted special and differential treatment

1. As noted throughout this proposal, certain commitments may imply resources – at least in the short to medium term – and may thus be beyond the means of least-developed countries and possibly other low income countries. This is notably the case with those simplified procedures that are easiest to apply via automated systems, as well as those proposals that presuppose broader customs reform.

Any such commitments should not apply until such time as the Member in question is in a position to implement them, a principle recognized in the negotiating modalities. It is therefore proposed that least-developed countries be exempted from such provisions until such time as they are able to implement them, and that in the meantime technical assistance should be directed to helping them build up the necessary domestic capacities. Developed-country Members and intergovernmental organizations should commit to the provision of such technical assistance in the manner set out below.

2. Transition periods

2. Some of the commitments suggested in this paper will take time to implement. For example, reviewing legislation or aligning documents and data requirements to international norms can in some cases be a lengthy process. Introducing simplified procedures for goods release presupposes some re-formulation of customs processes and training of officials. Introducing an authorized trader system also needs time as Members have to determine what system best suits their trade patterns and then prepare the necessary rules. In many cases these reforms, and therefore potentially assistance, need to go ahead in tandem.

3. Transitional periods should be available to enable developing countries to implement specific commitments in a progressive or staged manner. These could be based on each Member's individual needs and situation, or generalized, but should be linked to any reform or modernization programme under way in a Member as well as to technical assistance programming. More general commitments on transparency, non-discrimination, the avoidance of unnecessary barriers, and any other commitments that do not imply many resources, should however be implemented immediately.

3. Technical Assistance and Capacity Building Measures

4. The EC already dedicates considerable development assistance to trade facilitation, both at a national and regional level, and intends to continue to do so in the framework of the EC's development assistance, particularly if a set of WTO provisions, setting common standards to which assistance can in future be progressively targeted, can be established. In particular, as part of its efforts to meet the UN Millennium Development Goals targets for aid, the EC plans to increase its volume of development aid, including in the trade area, and some of this increased aid can, if requested by development partners in their development cooperation discussions with the EC, be directed to implementing trade facilitation measures, in both the narrow (WTO) and the broader (building up infrastructure for trade) sense.

5. Turning to the needs of WTO Members as expressed in the Negotiating Group, the EC believes that some more specific arrangements should be put in place in order to strengthen the link between the negotiation and implementation of any future commitments and the provision of technical assistance and capacity building. In accordance with the mandate, the EC proposes therefore the following arrangements for the improved provision and coordination of assistance in the field of trade facilitation:

- (a) Members should signal readiness to increase the level and quality of technical assistance for trade facilitation. Where competing requests for assistance are made, priority should be given to those countries whose needs are objectively the greatest and which have demonstrated clear commitment to carrying out simplification measures.
 - (b) Where a Member, as part of its development aid, is providing trade-related technical assistance to another Member it should, if requested by that other Member, as far as possible include in such assistance trade facilitation support. This would help ensure that where a recipient Member does seek support on trade facilitation, it can be provided as part of any TRA programme – the concept of "demand-driven" aid and can take account of the overall developmental framework of recipient countries and regions.
 - (c) The WTO and other organizations (the World Bank, WCO, UNCTAD, and others) should, well in advance of the implementation of the results of the negotiations, establish and operate jointly a platform for international cooperation and coordination of technical assistance in the field of trade facilitation, bringing together donor Members and recipient Members, regional groupings, as well as other intergovernmental organizations with a role to play (e.g., OECD, UN regional economic commissions etc.).
 - (d) The function of this platform would be to help ensure the transparency, coherence and, where necessary, coordination of assistance between donors and recipients, that assistance is directed, among other things, to implementing WTO commitments, that recipients' needs are matched with donors, and that potential gaps are filled. A role could be provided too for national and international trade federations in such transparency and coordination efforts, given that many trade federations are already providing assistance or investment in trade facilitation, are interested in doing so, or are often directly affected by measures. The platform should not duplicate the activities of existing coordination mechanisms, such as the WTO/OECD DAC database on technical assistance, but coordinate with them and use such instruments to help it fulfil its functions. The platform must also not detract from but support coordination and cooperation on the ground in recipient countries, which is fundamental to ensuring the effective delivery of assistance.
 - (e) This platform should be set up once the scope of the future trade facilitation provisions is clearer. The first and most important task of the platform could be to take stock of individual Members' trade facilitation needs in relation to the provisions emerging, making full use of existing diagnostic tools and assessments, and then help to identify, with donors, what kind of technical assistance, if any, would be needed to support implementation, and within what kind of timeframes. It would also be important early on to develop a common understanding on the appropriate sequencing of assistance for implementation, given that some trade facilitation measures – e.g., review and simplification of regulations – needs to take place before other measures.
 - (f) On this basis individual developing-country members would then be in a better position to determine what kind of transitional periods may be necessary in order to implement the results of the negotiations.
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