

**TRADE FACILITATION – WTO LAW AND
ITS REVISION TO FACILITATE
GLOBAL TRADE IN G**

to present the same information several times and in different forms, sometimes paper based, sometimes electronically. This results in a major bureaucratic effort. The Single Window has the advantage that it can be created in an e-environment as well as in a less advanced environment, for example, in a developing country where the window is not a web interface but a counter window in a (government) agency.

Another typical trade facilitation measure is the introduction of simplified procedures for traders who have acquired a special status, such as the AEO of the European Union (EU). The granting of such status usually depends on one's compliance record in the past or on the outcome of a risk analysis. In the case of the European AEO, a figure established within the framework of the European Commission's (EC) customs security program (CSP), the status is granted when certain criteria relating to the operators' control system, financial solvency and compliance record are met. Once conferred by one EU country, these criteria will not be re-examined in another member country, but this does not automatically confer the right to simplified procedures. It is possible that additional national criteria have to be met in order to benefit from them.

c. Economic impact of trade facilitation

It is said that the economic impact of trade facilitation has always been difficult to measure due to the lack of standard parameters. How, for example, should one measure the benefits resulting from

III. Trade facilitation in the WTO

a. Political background

Trade facilitation as a comprehensive approach to facilitating global trade in goods by reforming customs procedure was added to the WTO's agenda at its 1st Ministerial Conference in Singapore in 1996. Attention was drawn to the subject again in 2001 when this somewhat broad mandate was specified in the Ministerial Declaration launching the Doha Round:

27. Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations. In the period until the Fifth Session, the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of members, in particular developing and least-developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area (WTO Doha WT/MIN(01)/DEC/1).

However, the Cancun Ministerial passed without any results. While discussions mainly revolved around issues such as agriculture and the liberalisation of services, agreement was especially difficult on the Singapore Issues. Members persisted on their controversial positions regarding trade facilitation that were evident in the run-up to the Ministerial. Developing countries and least-developed countries (LDC) refused to take far-reaching obligations upon themselves which bore the risk of becoming defendant in a dispute settlement procedure. The breakthrough was achieved almost one year later, on 1 August 2004, when the 'July Package' was adopted. While other Singapore Issues were dropped, Members took note of the trade facilitation work done so far and agreed to start negotiations on the basis of modalities set forth in Annex D of the package. Besides committing themselves to clarifying and improving the relevant GATT Articles, Members recognised that the principle of special and differential treatment for developing and least-developed countries should extend beyond granting traditional transition periods for the implementation of commitments and that the extent and timing of entering into commitments should be related to the implementation capacities of such countries. Members would not be obliged to undertake investments in infrastructure projects beyond their means, and especially LDCs would only be required to undertake commitments to an extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

At its first meeting after the July session of the General Council, a Negotiating Group on Trade Facilitation was established and negotiations started as envisaged in the second half of 2004. Besides the aim of clarifying and improving relevant aspects of Articles V, VIII and X of the GATT 1994, provisions for an effective cooperation between customs authorities as well as between Customs and other government agencies are envisaged and customs compliance issues are looked at. Moreover, different international organisations have initiated programs in order to help countries to identify their trade needs and priorities. In July 2006, trade facilitation talks were suspended after they appeared to be one of iA aim Mhu12 (t) 4e Developi

panels have clarified that the requirement does not apply to the laws, regulations, decisions and rulings themselves, but to their administration, which has to be uniform. The obligation does not only apply to situations where traders or products from WTO Members are concerned, but also where traders or products from non-Member countries are at issue. This general requirement underlines the nature and goal of Article X GATT, which is focused on establishing transparency in Member's administration and not on abolishing discrimination among Members in this regard (*US – Stainless Steel, WT/DS179/R*; *EC – Bananas III, WT/DS27/AB/R*; *Argentina – Bovine Hides, WT/DS155/R*). With regard to impartiality, the panel in *Argentina – Bovine Hides* found that in cases where a party with a contrary commercial but no legal interest is allowed to participate in a customs clearance process, there is an inherent danger to a partial application of customs laws because this permits such party to obtain confidential information which it does not have a right to. Such participation would also qualify as unreasonable (*Argentina – Bovine Hides, WT/DS155/R*). This dispute shows that despite all transparency efforts, new trade facilitation regulations have to ensure protection of confidential information.

d. Others

Besides drawing on panel reports referring to Articles V, VIII and X GATT, Members' proposals are inspired by other multilateral trade agreements concluded in specific areas in the past. While the interpretation of the relevant Articles is important for their clarification and strengthening, the structure

With regard to Article X GATT, which is the broadest of the three relevant GATT Articles, Members want to see the use of the Internet for publication, the establishment of a Single Window or at least enquiry points, a time period between publication and entry into force as well as consultations on new and amended rules and the provision of information on the underlying policy objectives. Furthermore, binding advance rulings in certain specific areas and the release of goods in case of an appeal are up for discussion. In order to maintain and reinforce integrity and ethical conduct among officials, the establishment of a code of conduct and technical assistance to build up capacities and thereby prevent misconduct have been proposed.

In the area of transit, many Members wish to extend the concept of non-discrimination to different modes of transport, types of carriers and types of consignments. Some Members would like to see national treatment applied to traffic in transit. Others see the need for mentioning explicitly the possibility of exceptions justified by legitimate policy objectives (even though Articles XX and XXI GATT apply). With regard to transit fees and charges – to which Article X, paragraph 1 GATT does not apply – proposals include their publication, the prohibition of unpublished ones, and time periods between publication and their entry into force. Also, Members are suggesting that they be reviewed periodically and treated like fees connected with import and export in regard to the fact that they have to be strictly linked to services rendered. The publication of all laws, regulations, requirements and procedures on or in connection with transit is another prominent proposal as well as a time period between the publication of transit formalities and documentation requirements and their entry into force. The use of international standards, improved cooperation (which is essential for landlocked countries) and coordination as well as the clarification of terms, such as ‘goods in transit’ or ‘unnecessary delays’ are also likely to form part of a future agreement.

For fees and formalities connected with import and export, the proposals are similar. Specific parameters for charges should be established. They should be published and notified and the collection of unpublished ones should be prohibited. In order to reduce fees and formalities, they are to be reviewed periodically. Furthermore, Members want to prescribe international standards and the acceptance of commercially available information and copies.

IV. Outlook

The proposals are on the table. Members will have to take up negotiations and decide which of them .

References

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Websites

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WTO Dispute Settlement Reports

Argentina – Measures Affecting Export of Bovine Hides and the Imports of Finished Leather, WT/DS155/R.

Argentina – Measures Affecting Imports of Footwear, Textiles, Apparel and Other Items, WT/DS56/R & WT/DS56/AB/R.

Japan – Measures Affecting Consumer Photographic Film and Paper, WT/DS44/R.

United States – Anti-Dumping Measures on Stainless Steel Plate in Coils and Stainless Steel Sheet and Strip from Korea, WT/DS179/R.

United States – Customs User Fee, BISD 35S/245.

United States – Measures Affecting the Importation, Internal Sale and Use of Tobacco, BISD 41S/I/131.

United States – Restrictions on Imports of Cotton and Man-Made Fibre Underwear, WT/DS24/AB/R.

Further reading

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