

The World Trade Organization's
Doha Development Agenda
The Doha Negotiations after Six Years
Progress Report at the End of 2007

TRADE FACILITATION



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TRADE FACILITATION

BACKGROUND

When the Doha Round was launched in November 2001, the inclusion of Trade Facilitation as a subject for negotiation was uncertain. It was one of the so-called “Singapore Issues” (i.e. dating from the Singapore Ministerial Conference in 1996), whose future was to be decided at a later stage. It was in fact not until the middle of 2004 that a decision was taken to launch negotiations in this area.

The modalities for the negotiations on Trade Facilitation are set out in Annex D of the “July 2004 package” (WT/L/579). Key elements are :

- the negotiations aim to clarify and improve relevant aspects of GATT Articles V (Freedom of Transit), VIII (Fees and Formalities connected with Importation and Exportation), and X (Publication and Administration of Trade Regulations);
- negotiations also aim to enhance technical assistance and support for capacity building in this area;
- negotiations further aim at provisions for effective cooperation between customs or other appropriate authorities on trade facilitation and customs compliance issues;
- the principle of special and differential treatment for developing and least-developed countries is to be fully taken into account. This is recognized as meaning not just extended transitional periods but also that the extent and timing of commitments is to be related to implementation capacities;
- technical assistance and support is to be provided to developing and least-developed countries both to enable them to participate fully in the negotiations and to implement the results.

It is worth noting from the above that the negotiations do not cover the whole gamut of trade facilitation in the WTO. Aspects of trade facilitation are also covered by the WTO Agreements on Customs Valuation, Preshipment Inspection, Import Licensing Procedures, Rules of Origin, Technical Barriers to Trade, and Sanitary and Phytosanitary Measures, but these are not specifically

mentioned in the negotiating mandate which is limited to the three GATT Articles mentioned above.

Nevertheless there are many key areas covered by GATT Articles V, VIII and X. Main elements are as follows :

- Under Article V, each Member shall grant freedom of transit - for goods, vessels and other means of transit crossing its territory; via the routes most convenient for international transit; with no distinction relating to such matters as origin, destination or ownership. Such traffic is not to be subject to unnecessary delays or restrictions. MFN treatment is to be granted with respect to all charges, regulations and formalities, and charges are to be reasonable.
- Under Article VIII, all fees and charges in connection with importation or exportation must approximate in amount to the value of the services rendered, not represent an indirect protection to domestic products, and not represent a taxation of imports or exports for fiscal purposes. There should be no substantial penalties for minor breaches of customs regulations or procedural requirements. There is recognition of the need to minimize the incidence and complexity of import and export formalities.
- Under Article X, there is requirement to publish all trade regulations promptly and to administer these regulations uniformly, impartially and reasonably. Tribunals or procedures, independent of enforcement agencies, should be maintained or instituted for the prompt review and correction of administrative action.

While these features are certainly very welcome, the articles as they stand have been perceived by many Members as having a number of shortcomings, such as lack of clarity and precision, lack of operationality and enforceability, lack of sufficient transparency and predictability, and absence of requirements for cooperation and coordination among the various stakeholders.

A number of studies have indicated the potentially very large benefits of trade facilitation programs. For example, a 2002 World Bank study estimated that action on trade facilitation - admittedly defined more broadly than the WTO negotiations to cover improvements in ports, regulatory systems, standards and electronic commerce - could increase trade among APEC members by US\$280 billion. Trade facilitation is also seen as key to economic development in Africa

where, in many regions, international trade is severely inhibited not only by infrastructural shortcomings but also the lack of resources to develop and implement efficient border procedures and formalities.

INTER-AGENCY COOPERATION AT THE INTERNATIONAL LEVEL

The WTO Secretariat itself has had limited resources to devote to trade facilitation matters, especially since this subject was not until recently part of the Doha Round negotiations. It has therefore lent heavily on the experience of other international organizations such as the World Bank, the United Nations Conference on Trade and Development (UNCTAD), the United Nations Industrial Development Organization (UNIDO) and, in particular, the World Customs Organization (WCO). The WCO's regular participation in key meetings, substantive contributions based on its detailed, long experience, and its extensive collaboration in technical assistance activities have been invaluable.

MAJOR POSITIONS AND NEGOTIATING METHODS

Before the launch of negotiations and in their early stages, the WTO membership could be characterized according to three informal groupings. The "Colorado" group (amongst whom Australia, Canada, the EC, Hong Kong, Singapore, Switzerland and the US could be mentioned) was very positive, pushing for ambitious, binding commitments. A middle group (Pakistan, Turkey, Chinese Taipei, Peru, Uruguay and others) was positive but very sensitive to developing country concerns over implementation. And the so-called "Core Group" (the Philippines, India, Brazil, Kenya, Cuba, Malaysia and others) had resisted the launch and subsequently prioritized non-binding commitments with upfront technical assistance.

However, as the negotiations have progressed, a much more cooperative atmosphere has prevailed, so that these original groupings have now largely lost their relevance. There are still differences over the relative weight given by participants to binding commitments on the one hand and technical assistance on the other, but all have made attempts to take other points of view into account and to find middle ground.

The mutual confidence thus engendered has resulted in negotiating methods which are different from those being employed in other negotiating groups. A "bottom up" approach has developed involving textual negotiations in a collective setting. Although the EC and Switzerland have latterly tried to generate support for a process which would involve the Chairman (Ambassador

Sperisen-Yurt of Guatemala) producing a text – along the lines of the agriculture and NAMA negotiations – this has so far been resisted by the majority of participants.

There are essentially four pillars to the negotiations – commitments in relation to GATT Articles V, VIII and X, plus the broad issue of technical cooperation and capacity building. A further major concomitant element is the relationship between any commitments to be entered into under the various Articles and the provision of associated technical assistance and capacity building measures.

The negotiations on Trade Facilitation appear to have been insulated to a large extent – by the Members themselves – from other elements of the Doha Round. No linkages or trade-offs have been suggested or drawn, which should be interpreted as a positive sign for the outlook in this area.

SITUATION AT THE END OF 2007

Against a background of the multiple proposals, and revised proposals, submitted by Members since the start of negotiations, a collective informal drafting exercise was launched in November 2007 focusing initially on GATT Article X (Publication and Administration of Trade Regulations). It would appear that this exercise was successful in that participants were prepared to put forward and exchange concrete suggestions on how to revise proposals in order to take each others' concerns into account.

A further round of negotiations took place in December 2007, this time focusing on proposals under GATT Article VIII (Fees and Formalities). Members engaged in textual work that resulted in concrete ideas on the modifications needed to move towards consensus.

The next cluster of meetings will take place in February 2008, and these will focus on GATT Article V (Freedom of Transit) and the question of special and differential treatment (and in particular technical cooperation and capacity building).

That would complete a first iteration of the outline of a possible draft text of an agreement on Trade Facilitation.

In addition to the above, it should be noted that a WTO Trade Facilitation National Needs Assessment Project was launched in 2007. This is seen as a

necessary step to enable developing and least-developed countries to identify the steps and reforms they are likely to need to undertake in the light of a possible WTO agreement on Trade Facilitation. The project involves visits and subsequent reports by customs experts to countries requesting such an assessment. To date, 65 such requests have been received; 13 of these have been implemented; 35 will have been implemented by April, and the balance by September 2008.

GENERAL PROBLEM AREAS

At this stage it seems that many of the issues raised in the negotiations should be surmountable. However there are also a few broad areas which may be problematical as the negotiations move forward, for example:

- national security concerns have not yet been fully on the agenda. It is possible that some tension could develop between the requirements of some for full screening (of containers for example) and the risk assessment or targeted sampling techniques favoured by some others;
- the balance between clear binding commitments and “best endeavours.” The US, for example, has a very clear preference for the former, but there are issues which may not be capable of being handled in this way;
- the sequencing of binding commitments and the provision of commensurate technical cooperation and capacity building.

IMMEDIATE OUTLOOK AND THE WAY AHEAD

The immediate aim is for participants to obtain a clear outline of the draft text of an agreement by the end of February 2008. In the overall scheme of the Doha Round, this would, under an optimistic scenario, dovetail with agreements on modalities in the negotiations on agriculture and NAMA, thus breathing new life into the Round.

WHAT MIGHT BE THE CONTENT OF A WTO AGREEMENT ON TRADE FACILITATION?

While it is still too early to tell in detail what the content of an agreement might be, the following elements appear to be the possibilities and aspirations, based on the discussions so far.

Article V

The hope here would be to move as far as possible in the direction of national treatment with respect to goods in transit, subject to practical security concerns.

There could also be a move to minimize some of the trade-inhibiting requirements currently imposed, through the provision of capacity building measures. For example, due to resource constraints, some developing or least-developed countries currently impose a requirement for periodic convoys for any goods crossing their territories, which clearly inhibits trade and adds to costs.

It should be noted that the treatment of pipeline transit is potentially problematical in this pillar.

Article VIII

There is potentially quite a long list of issues related to fees and formalities which could be affected positively by an agreement, for example :

- simplification and/or reduction of fees and charges by making them strictly cost-based
- encouraging the role of authorized traders and prohibiting mandatory use of customs brokers
- use of international standards in matters such as forms, rules of origin
- procedural separation between customs clearance and release of goods
- more widespread use of risk management techniques
- post-clearance auditing of fees and duties
- expedited procedures for express shipments
- elimination of consular fees
- the more widespread introduction of “single window” procedures

Article X

The following improvements to transparency could be attainable :

- publication of border procedures
- availability of information on the internet
- information regarding electronic processing
- provision for prior consultation on changes in procedures
- the introduction of enquiry points
- availability of binding advanced rulings
- provision for clear and codified appeal processes

Overall, while many of the features described above with respect to the three GATT Articles could be regarded as current practice in many of the more developed economies, the effect of an agreement would certainly be to facilitate trade over a much wider geographical spread.

Special and differential treatment

It is generally accepted by negotiators that the introduction of improvements such as those described above will require technical assistance and capacity building, as well as transitional periods. The questions are rather how to sequence the assistance and the improvements, and to define the stage at which binding obligations are to be undertaken.

Based on discussions so far, it seems that a possible outcome in this area could be based on the needs assessments now underway. When an agreement is initialled, countries could be asked to schedule in draft form –

- a) which measures they can implement immediately;
- b) which measures require transitional periods prior to implementation;
and
- c) which measures will require not only transitional periods but also technical assistance and capacity building prior to implementation.

A process of discussion, examination and, where agreed, modification of draft schedules could then take place before finalization and ratification of the agreement and accompanying schedules.

This is, however, a potentially contentious area which will require much more discussion among participants in order to devise a solution which all can feel comfortable with.

LINK WITH “AID FOR TRADE”

The cost of introducing measures such as those described above in economies which currently lack them is far from prohibitive. The World Bank has conducted a number of pilot projects on upgrading of border procedures in developing countries. Based on experience so far, the cost could be in the order of \$5 million each for about 70 countries.

However, procedural improvements alone will have a limited impact. Trade facilitation in a wider sense will need in many countries to encompass new infrastructural investment and improvements to the logistical supply chain as well. The broader - and much more costly - “Aid for Trade” initiative will help to address these issues. The WTO negotiations can therefore be seen as just one component of a broader plan to remove the constraints on trade flows which currently exist in many countries.

TRADE FACILITATION – A SEPARATE TRACK?

The negotiations on Trade Facilitation enjoy general high level support amongst WTO member governments, notwithstanding that there may be in some places lower level bureaucratic opposition. Many would be disappointed if the momentum were to be lost amidst a general withering of the Doha Round negotiations. The possibility therefore certainly exists that, even if Doha in general enters a longish period of inactivity, the negotiations on Trade Facilitation could be pushed forward to a conclusion, perhaps on a provisional “early harvest” basis.