

TRADE FACILITATION

Issues Relating to the Physical Movement of Consignments (Transport and Transit) & Payment, Insurance and Other Financial Questions Affecting Cross-border Trade in Goods.

Communication by the European Community

A. PHYSICAL MOVEMENT OF CONSIGNMENTS (TRANSPORT AND TRANSIT)

As the March 1998 Symposium showed, this is a potentially vast area, covering everything from transport documentation or visa requirements for drivers to international transport conventions and upgrading of physical infrastructure, all of which have a direct or indirect impact on the ease with which goods cross borders. It seems necessary therefore to focus on areas where the WTO has a relevant role, either in terms of possible rule making or in terms of coordinating and guiding activity.

Based on proposals made at the March 1998 Symposium, consultations held with business groups and intergovernmental organisations, and the European Community's own reflections, the Community offers below some preliminary views on areas for consideration by the WTO.

1. Import, Export and Customs Procedures, and the GATS

Consultations with interested bodies such as representatives of shippers, carriers, freight forwarders, surface container consortia etc suggest that some of the major constraints to their operations relate to : excessive and unharmonised documentation and data requirements at import and export, continued reliance on paper based procedures, without adequate use of electronic techniques, including EDI, multiplicity of separate official interventions at import, with their associated information/data requirements, and delays in obtaining customs release of goods, particularly where documents or data have to travel with or precede the goods.

Our consultations indicate that some of the proposals made at the Symposium and taken up in the EC's previous¹ paper would, if turned into WTO commitments, meet many of the concerns not only of importers and exporters, but of the transport and freight sector too. Those proposals included :

- reduction and harmonisation of data.
- one-stop minimal data requirements.
- introduction of modern customs methods through the revised WCO Kyoto Convention
- advance clearance of consignments, post-clearance controls and audit, hours of opening of customs offices.
- Transparency and avoidance of sudden changes in documentation and other requirements,
- and progressive convergence of official controls on the international movement of goods.

¹ Document G/C/W/122 dated 22 September 1998

Concerns have been expressed however that the full benefits of further liberalisation of the transport sector *per se* may not be reaped without these improvements to trade procedures that the sector has to deal with on a day to day basis.

The Community suggests therefore that as we prepare for the next phase of GATS liberalisation, we need to recognise that un-simplified trade procedures can have a negative impact on the performance of service providers, notably in the areas of transport and distribution. Further liberalisation resulting from GATS 2000 should, to maximise its potential, be accompanied by ***parallel facilitation of the import and export procedures*** that affect the services sectors effectiveness and competitiveness. This suggests that in the next phase of GATS work we ensure that procedures applicable to trade in goods buttress the market access commitments negotiated in the field of trade in services and that, where necessary, the WTO introduces rules to simplify procedures relating to trade in goods impacting on services sectors.

A second area relevant to the next stage of GATS liberalisation relates to the ***temporary movement of personnel***. Evidence has been provided at the Symposium and since of arguably excessive and duplicative visa and related requirements for transport service personnel eg drivers operating international road haulage. These issues should also be taken up in the next phase of GATS work.

2. Documentation and Data Issues Relevant to Physical Movement of Consignments

Current Problems : One concern of traders and some transport service providers continues to be the excessive reliance in international transport and trade of ***multiple, negotiable and paper based documentation and data requirements***. The historical rationale for negotiable documents such as bills of lading (where rights to the cargo pass with physical transfer of the documents) is understood, and these documents are still necessary eg where ownership of goods changes during transportation, a frequent occurrence in commodities trade, but probably not for manufactured goods.

However, as UNCTAD and other organisations have recognised, the growth of multimodal transport (eg container based), and the pressure for rapid delivery times – just-in-time servicing of global supply, production and distribution operations, the need for airfreight and road express companies to maximise efficiency by relating origin-destination delivery times to their speed advantages - necessitates more than ever the speedy receipt of goods separately from paperwork, via non-negotiable documents, the acceptance by different transport modes of the same data in the same form, and the use of electronic data interchange rather than physical documents.

Options for Improvement : The EC in its previous submission proposed measures to reduce the quantity, harmonise, and promote electronic submission of, documentation and data requirements for import and export of goods. To the extent that similar requirements are imposed on parties involved in transportation of goods (freight forwarders, carriers etc) the same simplified data and documentation should apply, to enable the same minimum dataset to be used, or relevant elements of it extracted, through each stage of the transport chain irrespective of mode. This will in turn help to reduce the difference between the relatively streamlined information systems used between carriers and other private operators for their commercial purposes and those used for the commercial/administrative interface. It will also support the concept of the integrated transaction (sharing and control of the same data by exporting and importing administrations) described in the Community's previous submission.

The EC also suggested developing WTO provisions that would ensure use, as benchmark standards, of relevant UN-ECE Recommendations on trade facilitation, subject in some cases to revision and ongoing review. UN-ECE Recommendation 11 concerns facilitation of the documentary aspects of the transport of dangerous goods, while Recommendation 12 encourages the use of

non-negotiable waybills in electronic form. Adoption of such recommendations as default standards i.e. the norm in a WTO framework, would go in the direction of reducing and harmonising transport documentation requirements.

Beyond this it seems necessary however to look at other possible measures to promote, particularly in a multimodal transport framework, negotiable transport documents in electronic form, as well as other simplification measures. This is considered further in Section 3 below.

3. Intermodal/Multimodal Cooperation

A substantial concern of many sectors in international trade – both goods traders and carriers - is the lack of a uniform, harmonised régime for intermodal transportation of goods. Current international rules and practices are reflected in a multitude of international conventions and codes which are:

- largely single-modal in character;
- whose rate of adoption or implementation by national governments varies greatly;
- which vary significantly between each other in liability arrangements ; and
- which, even within a single mode (notably carriage by sea) have not been harmonised into a single set of rules.
- which often fail to reflect modern operational environments and use of information technologies, and which lack inbuilt time-windows for review and modernisation.

Problems are compounded where national legislation provides differing interpretations or only partial application of the international rules : at the Symposium in March concern was voiced over the apparently extraterritorial application of one WTO Member's liability rules. Moreover, those multimodal instruments that do exist, rather than offering a uniform régime, tend instead to incorporate provisions of the unimodal régimes into a « network » régime.

The consequence of current arrangements is therefore a patchwork of régimes for goods traders which fails to capitalise on modern IT-based communications systems and practices, which impedes the introduction and use of a single multimodal waybill/transport document, and which does not reflect fully the increased use of containerised transportation operating across different modes, making mode-specific liability arrangements inappropriate. In cases of loss or damage of goods, this creates uncertainty as to the time of loss/damage, uncertainty as to mode and identity of the carrier; and uncertainty as to the applicable legal regime for liability and its effects. Furthermore separate arrangements exist for transport of dangerous goods.

Possible Ways Forward

The EU is currently discussing bilaterally with major partners the prospects of greater harmonisation of regulations for different transport modes, including the feasibility of developing a single intermodal framework covering, *inter alia*, liability rules, the use of modern techniques for data provision, payments and invoicing methods, together with flanking measures for cargo tracking and tracing across the different modes.

This is however an area where one can consider possible action driven by the WTO. We believe it worth considering a WTO-led programme to centrally review the current regulatory framework, with the aim to coordinate and oversee the development of a single set of international regulations for goods moving intermodally. This exercise could encompass uniform liability rules, use of information technology, harmonised documentation and data requirements (including use of

non-negotiable documents); and means of frequent review and adjustment to take account of changing business practices.

Such a review would among other things, be a useful means to draw attention to problems of duplication, redundancy, omissions and rigidities in the current international regulatory framework. And it could promote the rationalisation and integration, where appropriate, of the corpus of rules represented by existing conventions and equivalent international instruments.

Any such review should thus involve all the relevant intergovernmental organisations as well as interested trade and business organisations, and focus in particular on the effect of different regulatory options on the effective movement of goods. The WTO is in our view uniquely well-positioned to carry out this task as it is not captive to any particular interest group and can achieve the optimum balance between public and commercial interests. But to do this would need the active participation of the key intergovernmental and business organisations operating in the sector.

The mandate of the Goods Council is to « assess the scope for WTO rules » in the field of trade facilitation. The proposal made above is not one of rule making in the conventional sense, but rather for a WTO initiative that could ultimately lead to rule making. It might require a longer timeframe than would the elaboration of some basic WTO provisions to simplify import, export and customs procedures, which we have proposed be done in the next phase of WTO negotiations.

The Community believes that the proposed review is best carried out within the framework of WTO trade facilitation, so as to ensure the right focus on movement of goods. It could however also be done as a *sui generis* activity or as a supporting element in the forthcoming negotiations on trade in services. Indeed, such a review could usefully input into the GATS 2000 process, as part of the examination of the classification of transport services for possible scheduling purposes.

Separately, the WTO could also consider specific instruments that could be made more enforceable by integration into a WTO framework of rules on trade facilitation (for example the IMO's FAL convention, Annex 9 of the ICAO 1944 Convention on International Civil Aviation, or Montreal Protocol IV of that Convention, which has just entered into force).

4. Other Issues

The EC recognises that the above proposals cover only a part of what potentially falls within transport-related aspects of trade facilitation. We have not addressed at all questions relating to physical infrastructure, which can give rise to serious constraints and must be tackled. At the March meeting of the CTG, where development and technical assistance issues are to be discussed, we intend to return in particular to consideration of infrastructural initiatives such as the ACIS (Advanced Cargo Information Systems) project being introduced in some developing regions.

B. PAYMENT, INSURANCE AND OTHER FINANCIAL QUESTIONS AFFECTING CROSS-BORDER TRADE IN GOODS.

Again this is a potentially broad area, raising some issues which probably go beyond the capacity of WTO in terms of possible rule making, or which are best resolved through competitive pressure at the private sector level. The Community has only carried out a preliminary assessment of issues which repay further study by WTO, and may wish to return to this subject at a later date.

At this stage, the Community suggests that the following issues receive attention.

1. Electronic Payment Systems

Widespread requirements to use and present physical documentation for bank payment and issuance of letters of credit, often tied to the use of negotiable documents, as well as insufficient use of electronic means for payments, continue to cause unnecessary delays to goods transactions. Several speakers at the March Symposium suggested that WTO promote greater use of secure electronic documentation for transfer of goods, and electronic payments procedures. As we develop global electronic commerce, we must ensure that electronic alternatives do not simply replicate in electronic form existing rigidities or duplicative requirements. At the next trade facilitation meeting of the CTG in March 1999, which will be studying electronic means to facilitate trade, the European Community hopes to consider these issues in more detail.

2. Banking Settlement Delays

As noted in the March 1998 Symposium, lengthy « float » times, i.e. the time taken between a customer paying monies into their bank and funds being received and usable in the exporter's bank account, can result in high interest charges and overdraft difficulties, particularly for small and medium sized enterprises. Inter-bank competition for customers has not by itself resolved this problem. Within the EU action has been taken. Directive 97/5/EC concerning cross border credit transfers aims to introduce minimum standards for such EU transactions, including time limits for bank processing. It would be of interest to examine the legislations of WTO member countries regulating this area with a view to consider whether possible future work on regulatory issues under the GATS could help ensure that such domestic regulations are not more burdensome than necessary to ensure the quality of the service.

3. Non-Payment & Credit Worthiness

A classic problem for international open account trading is the insecurity for exporters of selling to an unknown buyer : a potential risk unless the customer has been thoroughly checked for credit worthiness. Typically, the exporter has to rely on his own monitoring of procedures until receipt of payment ; However, the cost of obtaining up-to-date credit information can represent a significant proportion of profit margin. Within a future WTO framework of rules to simplify trade procedures the Community suggests that measures to improve access to credit information, particularly for SMEs and for companies in developing countries, be developed, possibly using the UNCTAD's Trade Points Programme as a vehicle for such access. Further development of ISO quality management standards setting norms of satisfactory performance regarding payment delays would also be worth considering.

Last, improved access to ordinary and commercial insurance is also needed, especially for small and medium sized enterprises, since a major insecurity for exporters selling on open account to unknown buyers is ensuring that consignments are not stolen or diverted en route. The Community would welcome views on whether WTO Members consider there is scope within WTO to address this problem

4. Late Payment in Commercial Transactions

Recent surveys carried out in the EU suggest that late payment of commercial debts continues to be a major hindrance to cross border trade, affecting companies' cashflow, profitability and competitiveness, and discouraging potential exporters. Within the EU, proposals are being elaborated² to penalise companies that habitually settle bills late, through the introduction of a legal right to interest on late payments.

² European Commission Doc 98/0126/final. Proposal for a European Parliament and Council Directive Combatting Late Payment in Commercial Transactions.

It would be of interest to know what similar provisions exist in other WTO members and whether Members believe this form of domestic regulation, one effect of which would be to provide greater security to international trade, could through WTO be promoted further.
