

WORLD TRADE ORGANIZATION

G/C/W/466
12 June 2003

(03-3063)

Council for Trade in Goods

Original: English

TRADE FACILITATION IN THE WTO: BENEFITS OF A RULES-BASED SYSTEM

Communication from Australia

The following communication, dated 11 June 2003, has been received from the Mission of Australia.

Introduction

This paper forms part of Australia's contribution to the WTO Council for Trade in Goods (CTG) discussions on the Doha work programme on trade facilitation in the lead up to the Fifth Ministerial Conference in Cancun. Previous CTG discussions highlight broad agreement about the benefits that can be achieved through implementing trade facilitation measures. However, there are some differing views on whether strengthened WTO rules are necessary to achieve these benefits. Some members question the need to revise Articles V, VIII and X of GATT 1994, or to negotiate additional commitments, as these outcomes could be achieved on a voluntary basis. Themes underlying these concerns included that:

- additional rules may exceed the implementation capacities of some members and cause concerns over dispute settlement;
- if problems with trade facilitation measures are related to lack of capacity to implement rather than a lack of commitment, non-complying countries should not be penalised; and
- commitments to meet capacity-building needs may prove to be insufficient.

The advantages of rules

Australia's submission in December 2002 (circulated in document G/C/W/443) noted that although there are substantial benefits available from trade facilitation measures, these are unlikely to be fully realised while their implementation remain for the most part voluntary. Australia's paper identified several advantages from strengthened rules through:

- providing a universal and harmonised approach to ensure consistent implementation (such as in provisions in free trade agreements);
- encouraging support and compliance from the trade community for efficient and effective border agency operation;
- providing for the necessary political impetus to guide national efforts to simplify and modernise trade procedures and carry out domestic reforms that otherwise might not take place, even though their desirability is recognized; and
- offering strengthened rules and monitoring mechanisms, and thereby improving transparency and predictability for traders and helping them compete on a non-discriminatory basis.

Strengthened rules can deliver significant advantages for members prepared to make firm commitments, in particular by accelerating national efforts to simplify and modernise trade procedures and to carry out related administrative reform. For example, and in relation to some of the concerns raised, WTO trade facilitation rules could:

- ensure that both trade liberalisation and trade facilitation are placed on political and economic agendas;
- enable impediments to trade to be addressed transparently and by targeted assistance.
- provide political momentum to advance the reform and modernisation of border agencies;
- elevate funding priority for capacity building directed at trade facilitation measures; and
- raise the profile of customs administrations and border agencies in some member administrations.

In addition to these points, and in respect of concerns about implementation capabilities, it is useful to acknowledge that the development of rules can explicitly take account of developing country and implementation issues. For example the US stressed in its submission that the needs of members at lower levels of development will be given proper consideration for special and differential treatment and to ensure adequate technical assistance and support for capacity building. Japan suggested a three pillars approach, tying together an action program (setting non-binding and long-term objectives for trade facilitation), capacity building activities and rule setting. The European Community has recognised the need for capacity-building measures and has noted the systemic importance of binding rules in the WTO, but at the same time underlined the non-prescriptive nature of rules and the need for members to view such rules as essentially a commitment to a process of modernisation of trade facilitation procedures.

In developing strengthened trade facilitation arrangements Australia would welcome and support debate aimed at ensuring appropriate technical assistance and capacity-building measures, as well as addressing the issue of special and differential treatment for developing countries. We would also suggest that access to binding, enforceable rules through an established, impartial dispute settlement mechanism could provide security for developing as well as developed countries.

Existing binding rules

There are examples of members at varying levels of economic development accepting binding obligations such as through accession to the revised International Convention on the Simplification and Harmonisation of Customs Procedures (the revised Kyoto Convention). By adopting the Kyoto Convention governments commit themselves to the implementation of international standards for the border management of trade and to the modernisation of customs procedures.

It is encouraging that several governments, including those in less developed countries, have either acceded to the Kyoto Convention or are considering how to progress accession through national legislative and political processes¹. The composition of accession countries thus far reveals that the level of development need not be an impediment to the implementation of trade facilitation activities. The WCO advises that several of its members looking to apply the Convention attribute their accession difficulties not to physical infrastructure problems but to legislative processes and the lack of technical and linguistic expertise. Its broad acceptance by both developed and developing countries is a positive example of trade facilitating measures that can be achieved through a negotiated process supported by appropriate capacity building activity.

¹ 14 contracting parties have acceded: Algeria, Australia, Canada, China, Czech Republic, Korea Japan, Latvia, Lesotho, Morocco, New Zealand, Slovakia, Uganda and Zimbabwe. Four contracting parties have signed subject to ratification: Democratic Republic of Congo, Sri Lanka, Switzerland and Zambia. The WCO reports that many other members have indicated that their internal ratification processes are well underway.

Advantages of the WTO

Progress with accession to the Kyoto Convention has however been slower than expected. Although the provisions of the Convention are binding, accession is voluntary. This has delayed the realisation of the benefits of the Convention and perhaps illustrates that relying on voluntary commitments is less effective as compared with the strong political impetus and direction for countries to address border administration and procedures that can be realised from WTO commitments.

Moreover, trade facilitation covers several aspects of border management and involves many agencies associated with border controls, such as those responsible for customs, transport, health, quarantine, veterinary, agriculture, finance, defence and justice. To be fully beneficial, trade facilitation measures should apply to the maximum extent possible across the entire border management process. The WTO, as an organization establishing rules for international trade, is the only international organisation with a sufficiently broad mandate to cover all aspects of border management bearing on international trade.

National, bilateral and regional initiatives cannot deliver the comprehensive reform necessary to ensure all members benefit from trade facilitation. In the absence of a coherent multilateral framework, bilateral and regional initiatives risk delivering, over the longer term, a fragmented or piecemeal approach to trade facilitation, and militate against the wider sharing of trade facilitation benefits.

Conclusion

The discussions so far have highlighted broad agreement about the general importance and the overall benefits of trade facilitation measures to expedite the movement, release and clearance of goods. Concerns over the development of WTO rules centre on the implementation capacities of some Members. Such concerns point to the need for appropriate attention to be given to capacity building and special and differential treatment.

While there are examples of good progress being achieved with the implementation of trade facilitation measures, greater benefits would be realised through the development of a framework of WTO rules that would:

- secure the political commitment of WTO members;
 - set the international policy framework needed to give direction and consistency to trade facilitation initiatives across all aspects of border management;
 - give the private sector more confidence to trade and invest;
 - support the implementation of the trade facilitation instruments of other organisations, notably the WCO; and
 - ensure a coherent and targeted approach to the delivery of technical assistance and capacity building, consistent with Members' obligations.
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