

CHAPTER 25

Trade facilitation

Trade facilitation is one of the new subjects added to the WTO work programme at the 1996 Singapore Ministerial Conference. The Ministerial Declaration of that Conference directed the Council for Trade in Goods to undertake exploratory and analytical work in this area. The relevant paragraph in the Declaration reads as follows:

[The Ministers] direct the Council for Trade in Goods to undertake exploratory and analytical work, drawing on the work of other relevant international organizations, on the simplification of trade procedures, in order to assess the scope for WTO rules in this area.

The discussion in this chapter is organized as follows:

- The international and regional governmental and other organizations that have been doing work in this area, the work done so far, and work underway in the main organizations.
- The concept of trade facilitation and the provisions of the WTO Agreements aiming specifically at promoting trade facilitation.
- The main reasons behind the proposals for involving WTO in the work on trade facilitation and the subject areas suggested for inclusion in the work programme.
- Ongoing discussions in WTO.

Work by international organizations other than WTO

The recognition that methods for doing business and governmental procedures for clearing internationally traded goods could lead to delays and add to costs has prompted a number of organizations to adopt conventions and other legal instruments that lay down rules, recommendations or standards to facilitate trade. Box 60 lists the various international inter-governmental and non-governmental organizations that are currently engaged in work on trade facilitation.

Most of the organizations listed in the box cover the limited subject areas falling within their mandates.

WTO law on trade facilitation

Defining trade facilitation

There is no agreed definition of trade facilitation and the term is used in different organizations to cover different ranges of activities. At the broadest

Box 60**Organizations engaged in work on trade facilitation****International inter-governmental organizations**

International Civil Aviation Organization (ICAO)
International Monetary Fund (IMF)
International Maritime Organization (IMO)
International Trade Centre UNCTAD/WTO (ITC)
Organisation for Economic Co-operation and Development (OECD)
United Nations Conference on Trade and Development (UNCTAD)
United Nations Economic Commission for Europe (ECE)
United Nations Commission on International Trade Law (UNCITRAL)
United Nations Economic and Social Commission for Asia and the Pacific (ESCAP)
World Customs Organization (WCO)
World Bank

International non-governmental organizations

International Chamber of Commerce (ICC)
International Chamber of Shipping (ICS)
International Air Transport Association (IATA)
International Organization for Standardization (ISO)
International Road Transport Union (IRU)
International Federation of Freight Forwarders Associations (FIATA)

Regional organizations, free trade areas and customs unions

Asia-Pacific Economic Cooperation forum (APEC)
European Union (EU)
North American Free Trade Agreement (NAFTA)

level, the term is applied to include the work done by UNCTAD to encourage countries to establish national Trade Points which group together, either physically or electronically, the various agencies participating in foreign trade transactions so that they can provide the services required to complete such transactions efficiently and promptly. In the narrower sense, however, the term is applied to work on improving the documentary requirements and procedures imposed by countries to secure compliance with the rules applicable to traded goods at the time of importation, exportation and during transit. Such measures include:

- Customs control measures to obtain compliance with customs laws and regulations;
- Technical regulations to ensure that goods meet the mandatory standards specified in national laws and regulations;
- Veterinary inspections of animals and animal products to protect animal and human life from the pests and diseases that they may carry;
- Phytosanitary inspections of plants and plant products to prevent the introduction and the spread of pests;
- Quality control inspections (other than those mentioned above) to ensure that the goods correspond to the minimum international or national standards specified in relevant laws and regulations.

WTO Agreements: provisions on trade facilitation

In some of the areas covered by the narrower definition, the WTO Agreements carry provisions which facilitate trade, as can be seen in box 61.

Box 61

WTO provisions to facilitate trade

Subject areas

WTO Agreements

Customs control measures

- ❑ *Agreement on Customs Valuation.* This delineates the rules for determining the value of imported goods for the purpose of levying ad valorem customs duties. (See chapter 3.)
- ❑ *Agreement on Rules of Origin.* The agreement on this subject is being developed in WTO on the basis of the technical work currently being undertaken by WCO on the harmonization of rules of origin. The agreement will set out the rules for determining the origin of goods imported on an MFN basis for such purposes as the application of safeguard measures or the levy of anti-dumping duties. (See chapter 12.)
- ❑ *Agreement on Preshipment Inspection.* The Agreement specifies the rules on how prices recommended by PSI companies, after verification before importation in the importing country, can be used to determine value for Customs purposes. (See chapter 4.)
- ❑ *Agreement on Import Licensing Procedures.* The Agreement lays down rules on the issuance of import licences covering products to which licensing systems are applicable. (See chapter 6.)

Compliance with technical, sanitary and phytosanitary regulations

The Agreements on Technical Barriers to Trade and on the Application of Sanitary and Phytosanitary Measures set out principles and rules which seek to ensure that rules and procedures adopted at the national level in the areas covered by the Agreements do not constitute barriers to trade. (See chapter 5.)

In addition, GATT 1994 contains provisions which, by adding transparency to rules and regulations adopted at the national level and by ensuring that they do not constitute barriers to trade, aim at facilitating trade.

- ❑ *Article V: Freedom of transit.*
- ❑ *Article VIII: Fees and formalities connected with importation and exportation.*
- ❑ *Article X: Publication and administration of trade regulations.*

Proposals calling for WTO involvement in trade facilitation

Reasons for the proposals

It is important to note that the main thrust of the WTO provisions cited above is the removal of the non-tariff barriers resulting from the rules applied by countries at the border to imported and exported goods.

Over the years, international organizations have been developing guidelines for countries to follow in adopting procedures at the practical level in relation, for instance, to the customs clearance of import and export goods. In the process they have gained considerable expertise on trade facilitation. The proposals calling for the involvement of WTO in addition have three broad reasons behind them.

Improving the enforceability of the rules

The first has to do with the difference in the legal nature and the enforceability of obligations within the WTO framework and those developed by other organizations.

The bulk of the rules of the WTO Agreements are legally binding on member countries. By contrast, only a small number of the legal instruments adopted by other organizations like ECE and WCO impose binding obligations. Most of them take the form of guidelines, of which the United Nations Layout Key for Trade Documents, the United Nations EDIFACT (Electronic Data Interchange for Administration, Commerce and Transport) standards for data transmission through computers, and the ISO standards are examples. They may also be issued as models or as recommended procedures or practices (e.g. the Annexes to the International Convention on the Simplification and Harmonization of Customs Procedures, also known as the Kyoto Convention).

These guidelines or recommended practices do not impose binding obligations but simply call on countries to use their ‘best endeavours’ to abide by them. Most of them do not need to be formally accepted and ratified by governments.

Enforceability, even in the case of the small number of instruments that are binding (for instance, the main text of the Kyoto Convention but not its Annexes), differs considerably from that imposed by the WTO legal instruments.

These differences emanate from the nature of the sanctions available in the event of breach. Countries whose interests are adversely affected by another country’s failure to comply with a WTO rule can invoke dispute settlement procedures. Failure to carry out the decisions of the Dispute Settlement Body can lead to the imposition of retaliatory countermeasures by aggrieved countries. Such countermeasures can take the form of increased tariffs on imports from the country in default or the payment of compensation by this country.

No such sanctions are available under the instruments developed by other organizations. While some instruments do carry provisions for the consideration of complaints against non-compliance by management committees and for the settlement of disputes, the only sanction they provide is moral pressure and, if that fails, censure.

By adopting rules in some of these areas in WTO or by bringing some of the instruments negotiated in other organizations within the ambit of WTO law, the proponents of the proposal hope to make the rules more enforceable. Such rules would generally be binding and would carry with them the threat of the imposition of trade sanctions in the event of non-compliance.

In this context, it is important to note that while the WTO Agreements impose binding obligations on Members, in a few cases member countries are merely required to use their best endeavours to implement some of their provisions. For instance, most of the provisions on special and differential treatment of developing countries impose best-endeavour obligations on developed countries.

Improving political willingness to abide by rules

The second reason for suggesting that WTO should develop rules in new subject areas is in the domain of political economy. The proponents believe that, given the importance being attached to the WTO legal system in the globalizing world economy, countries will be more willing to apply the standards or recommendations of other organizations if they are brought within the ambit of the WTO system.

This can be done in two ways. One is to impose binding obligations that in certain areas member countries will abide by the rules developed by other international organizations. The Agreements on TBT and SPS stipulate, for instance, that standards adopted by ISO, the Codex Alimentarius Commission, the International Plant Protection Convention and the International Office of Epizootics should be treated as international standards and impose binding obligations on countries to use them as a basis for their mandatory regulations unless they can justify the need for deviations under the specific exceptions provided by the Agreements.

The other approach is to make certain conventions or agreements part of the WTO legal system. The Agreement on TRIPS, for instance, by reference to the Berne Convention, makes it part of the Agreement and imposes additional obligations on Members. It is argued that, in a similar way, it may be possible to make compliance with the “the Kyoto Convention and its Annexes as well as the other standards and recommendations developed by other organizations” mandatory by integrating them into the WTO system.

Necessity for adopting international standards on electronic data transmission

The third reason for suggesting WTO’s greater involvement in trade facilitation arises from the technological progress in transmitting data through electronic devices, making it increasingly necessary for all countries to adopt international standards. The development of the UN/ECE EDIFACT standard for data transmission, for instance, was stimulated by the difficulties being caused by the differing standards for data transmission in the United States and the European Union. Countries which fail to encourage the electronic transmission of the data required by banks, importers, other trade operators and Customs will find themselves at an increasing disadvantage in international markets. The involvement of WTO will further encourage work at the technical level to develop data transmission standards and ensure that such standards are adopted by all countries.

Subject areas suggested for inclusion in a WTO work programme on trade facilitation

The specific subjects to be included in a WTO work programme on trade facilitation have not yet been identified and the question of whether WTO should play a direct role in the subject area has not yet been decided. However, the submissions made by some countries provide some indications of a possible WTO role. Broadly speaking, they say that it may be desirable to adopt binding rules in the following areas:

- ❑ Adoption of continuous or non-stop procedures for the clearance of goods by electronic means.
- ❑ Adoption of binding uniform standards for the transmission of information through electronic means by using standards developed by UN/ECE, ISO and UNCTAD.

- ❑ Adoption of audit-based systems for customs control. Under these systems consignments are not checked individually; they use risk assessment and management procedures and allow authorized traders to certify origin and clear goods through Customs.
- ❑ Simplification and standardization of documents used in import and export procedures.
- ❑ Adoption, as part of the WTO legal system, of the revised standards and recommendations that may be agreed in the framework of the WCO Kyoto and Istanbul Conventions.
- ❑ Adoption of guidelines to combat customs-related corruption and other malpractices on the basis of the WCO's Arusha Declaration.

Work in progress

Informal exploratory and analytical meetings of interested member countries are currently being held under the auspices of the Council for Trade in Goods. The discussions in these meetings have so far focused on:

- ❑ Import and export procedures and requirements (including customs and border-crossing problems);
- ❑ Physical movement of consignments (transport and transit) as well as payments, insurance and other financial requirements that affect the cross-border movement of goods;
- ❑ Electronic facilities and their importance in facilitating international trade;
- ❑ Technical cooperation and development in relation to the simplification of trade procedures; and
- ❑ The relationship between the WTO Agreements and facilitation.

Decisions on how further work is to be pursued are expected to be taken at the Third Ministerial Conference in 1999 on the basis of the recommendations on the Council for Trade in Goods which will take into account the results of the informal consultations.