



# BULLETIN

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## TRADE FACILITATION IN THE MULTILATERAL FRAMEWORK OF THE WORLD TRADE ORGANIZATION (WTO)

This article is a follow-up to the [FAL Bulletin No. 167](#), in the sense that it considers developments in *trade facilitation* within WTO. Its focus, however, is exclusively on what has occurred within WTO in this area. Emphasis is placed not only on expanding on, but also on updating the relevant background information presented on the Subject in FAL No. 167. An attempt has been made to incorporate some analytical elements into an orientation that is primarily descriptive.

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### I. INTRODUCTION

It should be recalled that the term *trade facilitation* refers to a relatively recent concept which has still not been clearly defined. Thus, it covers a wide range of subject areas including customs procedures, rules of origin, technical and quality standards, transportation, and the transmission of trade information. Furthermore, *trade facilitation* is linked to various other types of services related to international transactions which are aimed at simplifying the procedures required for the commercial exchange of goods and services, the conduct of trade, and the establishment of foreign investment in a world increasingly influenced by economic globalization.

The concept of “*trade facilitation*”, was first introduced in the World Trade Organization (WTO) work programme at the 1996 Ministerial Conference in Singapore following a specific mandate handed down to the WTO Council for Trade in Goods, instructing the latter “to undertake exploratory and analysis 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.”

Notwithstanding the above, it is important to realise that in the judicial confines of what is now the WTO, a number of special regulations existed previously in the area of trade facilitation geared particularly towards the simplification and harmonization of the procedures governing the international trade in goods. We refer specifically to four articles dealing respectively with freedom of transit, customs valuation, import and export duties and customs formalities, and the publication and application of commercial regulations. It should be noted that these regulations were already part of the original 1947 General Agreement on Tariffs and Trade (GATT). This agreement had undergone various modifications over time as a result of the various rounds of negotiations. The last of these, known as the Uruguay Round, was concluded in 1994 and gave rise to the GATT text currently in use, referred to as GATT 1994.

Hence, practically all of the above-mentioned regulations had been amended by 1994 and/or supplemented by additional rules relating to import licences, pre-shipment inspection, rules of origin, technical barriers to trade, and the application of health related measures. Moreover, even though WTO was created in 1995 and although GATT 1994 is an integral part of it, WTO also deals with trade in services and trade-related aspects of intellectual property rights issues. WTO is not simply an extension of GATT 1994, but constitutes, principally in terms of the way it functions, a far more complex, modern and efficient institution than GATT 1994. The essential point about WTO is that its negotiations are permanent and its commitments completely multilateral, since the different subjects are agreed upon as a single undertaking. Thus, its regulations constitute agreements that are binding on all its Members.

The above notwithstanding, this issue of the FAL Bulletin deals essentially with issues that have arisen in WTO since introduction of the concept of *trade facilitation* in 1996. Thus, this article does not dwell on the changes that occurred in specific areas referred to above before or since 1996 but which were, in any case parallel to and independent of the outcome of the decisions adopted by the WTO Ministerial Conference in Singapore.

## **II. WTO WORK ON *TRADE FACILITATION* SINCE THE 1996 SINGAPORE MINISTERIAL CONFERENCE.**

Since the mandate issued by the WTO Ministerial Conference in Singapore, within the framework of the Council for Trade in Goods, progress has been made in various areas consistent with the implementation of exploratory and analytical studies. The first of these relates to the drafting of a descriptive note outlining the principal initiatives and *trade facilitation* activities carried out by more than 15 international organizations, including non-governmental organizations (NGOs). Among the intergovernmental organizations included were the United Nations Economic Commission for Europe (ECE), the United Nations Conference on Trade and Development (UNCTAD), the World Customs Organization (WCO), the United Nations Commission on International Trade Law (UNCITRAL), the International Maritime Organization (IMO), the United Nations Economic and Social Commission for Asia and the Pacific (ESCAP) and the Organisation for Economic Co-operation and Development (OECD). The non-governmental organizations were the

International Organization for Standardization (ISO), the International Chamber of Commerce (ICC), the International Chamber of Shipping (ICS), the International Road Transport Union (IRU), and the International Federation of Freight Forwarders Associations (FIATA).

The second event of note was the Symposium on *trade facilitation* held in March 1998 and attended by representatives from the public sector as well as from private companies. The aim of the symposium was to shift the debate onto the analytical phase, by evaluating the coverage of WTO rules in this field. In this regard, two important matters deserve attention. The first concerns the wide range of issues and problems enveloped by *trade facilitation* and the equally diverse suggestions to address and solve them that have been put forward by representatives of both the public and private sectors. The second is that the critical point, or focus of attention was identified as arising from the official requirements in terms of national regulations governing the import and export of goods, in particular customs procedures and border crossings.

Later, in July 1998, the Council for Trade in Goods decided to carry out new exploratory and analytical studies, this time to be conducted outside of the framework of its own formal meetings. This was deemed necessary as it was thought that a specialized forum would be more appropriate for dealing with issues relating to *trade facilitation*. It was agreed that four meetings would be held on the subject, but that with respect to the Council for Trade in Goods, they would be of an informal nature. They were scheduled to take place on the dates set out below and to cover the following subjects:

- a) September 1998. Import and export procedures and prescriptions, including border crossing and custom problems; general overview of the Kyoto Convention and the review process then in progress.
- b) December 1998. Physical movement of shipments (transport and transit); payments, insurance and other financial requirements affecting cross-border movement of goods.
- c) March 1999. Electronic media and their importance in international trade facilitation; technical cooperation and development issues relating to simplification of trade-related procedures; examination of WTO agreements relating to trade facilitation or including relevant provisions.
- d) June 1999. Review of exploratory and analytical studies in order to evaluate the WTO rules in the area of *trade facilitation*.

Participants at the first two meetings had before them a number of documents submitted officially by various WTO Members. The contributions that generated the most interest were the declarations endorsed by the European Communities, Canada, Republic of Korea and China. At the third meeting, documents generated by other relevant organs of WTO were distributed. These focused on aspects of trade facilitation, as mentioned earlier in this Bulletin. Among other things, they addressed the Committee on the Technical Barriers to Trade, the Committee on Customs Valuation, the Council for Trade in Services, the Council for Trade-

## Related Aspects of Intellectual Property Rights and the Committee on Trade and Development.

At the fourth and last of the informal meetings, it was agreed that *trade facilitation* was beneficial for all economic agents involved in international economic transactions and for the economies of all WTO members countries. Consensus was also reached on the need for the full implementation of the agreements already adopted by WTO in the area of *trade facilitation*. Delegations also agreed that the technical cooperation intended to improve national capability in this area should be more efficient, which would require closer coordination among the parties involved. On the other hand, delegations disagreed over the substantive inferences that could be drawn from the exploratory and analytical studies that had been developed as part of the work programme. In short, the main point of disagreement was whether or not to proceed with the establishment of new rules on *trade facilitation* within the jurisdiction of WTO.

Some delegations, mainly representatives of developed countries, stated that the areas of *trade facilitation* in which new WTO rules ought to be established must be specially defined. This position was based on the need to establish a multilateral political commitment to carry out, more or less uniformly and on the basis of the same principles, the necessary administrative reforms in countries, especially with respect to the modernization of customs administrations and the relevant business institutions. This would allow for the provision of technical assistance in greater volume and of a higher quality to the countries that require it. Lastly, delegations expressed the hope that *trade facilitation* issues would be included in the preparatory phase of the following WTO Ministerial Conference, scheduled to take place in Seattle towards the end of 1999.

On the other hand, those with opposing points of view, principally from developing countries, argued that many members were making major independent efforts at the national level in the area of *trade facilitation* and that these should be appreciated. These individual advances would naturally promote the required political commitment, since all indications were that these national reform efforts would continue. This argument was supported by the conviction that, even if a WTO-centred approach to *trade facilitation* were appropriate, it still did not seem to be the most appropriate time to propose the establishment of binding rules in this area. This position also suggested that a more specific mandate might be expected to emerge from the Seattle Ministerial Conference in terms of the issues to be addressed by WTO under *trade facilitation*, along with more precise practical indications.

At the fourth and last of the informal meetings it was decided that a report would be prepared for presentation to the WTO General Council listing the *trade facilitation* activities undertaken since the Singapore meeting.

### **III. THE WTO MINISTERIAL CONFERENCE IN SEATTLE AND ITS RELATIONSHIP WITH TRADE FACILITATION.**

This Conference was held from 30 November and 3 December 1999. Although there was no

general expectation or prior agreement on the issue, many delegations hoped that the event would launch a new round of WTO negotiations. This never occurred due to the highly divergent positions that countries held on most of the fundamental issues on the agenda. This also explains why, contrary to the explicit objective and formal expectations of the Conference, no ministerial declaration was issued.

The majority of the developing countries were strongly opposed to the negotiation of new rules on *Trade facilitation* within the WTO legal framework. These countries also pointed to the urgent need to strengthen technical cooperation in this area. The debate on all of the conflicting issues that surfaced in Seattle has continued in Geneva, but it seems that important advances have been made towards convergence. So much so, that the WTO General Director has expressed the hope of initiating a new round of negotiations in Doha, Qatar, towards the end of 2001 or the beginning of 2002.

#### **IV. EVENTS RELATING TO *TRADE FACILITATION* IN WTO AFTER THE MINISTERIAL CONFERENCE IN SEATTLE.**

In the year 2000, the Council for Trade in Goods held three informal meetings on *trade facilitation* in June, July and October, respectively, which were attended by the secretariats of the International Maritime Organization (IMO), the International Trade Center (ITC), ECE, UNCTAD and the World Customs Organization (WCO). In addition, Members contributed a total of 16 written documents, as well as one from UNCTAD in its capacity as observer. Lastly, in December of the same year, the Council for Trade in Goods prepared a status report on the *trade facilitation* discussions in WTO.

Since the start of 2001, WTO has placed an emphasis on two matters relating to *trade facilitation*, one of which is the need to optimize the efficiency of the technical assistance programmes. This matter has gradually been assuming greater importance in this Organization, primarily because it responds to the needs expressed by the majority of the developing countries. A workshop held as recently as 10-11 May 2001 dealt exclusively with this point and with the creation of national capabilities for *trade facilitation*. Also, since the beginning of the year, emphasis has also been placed on the need to reach agreement on *trade facilitation* in the next WTO round of negotiations. This has been central to each of the two informal meetings held by the Council for Trade in Goods in February and May. These advances would give an idea of the future treatment this issue may receive within WTO.

#### **V. THE POSSIBLE ESTABLISHMENT OF BINDING RULES ON *TRADE FACILITATION* IN WTO**

If the next WTO round of negotiations is initiated as expected, there is a high probability that *trade facilitation* will be one of the subjects up for discussion, although this will be confined to some specific aspects of the concept. A realistic and straightforward resolution would be put forward that would have the support of the developed countries, although not exclusively so, as it would also meet with the approval of some developing countries, including Argentina, Chile, Columbia, Costa Rica, Israel, Republic of Korea, Singapore and Uruguay. Under these

circumstances, it is possible that the rest of the developing countries would not oppose the establishment of WTO legally binding regulations on *trade facilitation*, particularly if, for the time being, only certain very limited aspects of the overall concept were negotiated in a very specific way.

In fact, it seems that the majority of WTO Members will subscribe to informal preliminary agreements on the need for binding regulations, falling within the legal framework of this organization, for the simplification of *customs border procedures*. This would consist basically of minimizing import and export procedures, introducing modern flexible customs control systems based on risk evaluation techniques that allow for customs inspection after shipping, processing documentation prior to product arrival and the application of especially favourable procedures or fast-track services for authorized trading enterprises, adaptation of requirements and procedures in line with current international standards and instruments, the concentration of official controls within a centralized organism for each country, the establishment of a *single window* for the presentation of information required, and, in the absence of valid international rules, the recognition of current national rules as their equivalent.

Two further arguments confirm the belief that at least some aspects of *trade facilitation* may be negotiated in the next WTO round. The first is that since the Ministerial Conference in Seattle, the representatives in Geneva of the countries in favour of the establishment of binding rules on *trade facilitation* in WTO have maintained a constant lobby aimed directly at unconvinced member countries. The second argument stems from the fact that, in either case, it would deal with a negotiation undertaken in global terms. The countries that oppose the creation of binding rules on *trade facilitation* in WTO could change their minds in exchange for agreements that would benefit, and be of great interest to, them, such as advances in the field of agricultural trade.

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