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# BULLETIN

FACILITATION OF TRADE AND TRANSPORT IN LATIN AMERICA AND THE CARIBBEAN



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## THE FACILITATION OF TRADE IN THE EUROPEAN UNION

In terms of its contents, this article is a natural continuation of [FAL Bulletin No. 167](#). In that edition of the Bulletin, conceptual progress was made in defining the notion of “facilitation of trade” and in outlining how this issue is dealt with in some international organizations; here, information referring to the European Union (EU) is presented in a detailed fashion. For further information or comments, please contact the author of this article, Mr. Miguel Izam ([mizam@eclac.cl](mailto:mizam@eclac.cl)), a staff member of the International Trade Unit of ECLAC.

### A. SUMMARY AND CONCLUSIONS

The origins of the European Union date back to 1951; the economic integration of the bloc has been marked by a number of historic milestones, one of the most important of which was the formation of the single market in 1993. This came into being upon the dismantling of most of what were known as *physical, technical and fiscal barriers*, whose existence still impeded the free movement of goods, services, capital and labour within the EU. All of the measures implemented for those purposes, prior to and even after 1993, implicitly form part of a concept of facilitation of trade, an expression that has almost never been used explicitly in relation to the EU market. Notwithstanding the above, the results achieved within the confines of the Community in this area have been among the most successful anywhere in the world. This, coupled with the benefits that this integration agreement would bring were it able to simplify the EU’s economic relations with the rest of the world, explains why the bloc is the most active member of the World Trade Organization (WTO), promoting the establishment by the multilateral agency of binding standards on facilitation of trade in clearly defined sectors.

### B. MAIN EVENTS IN THE HISTORY OF THE EUROPEAN UNION

The EU is considered to be the most advanced model of regional economic integration.<sup>[1]</sup> The construction process has been quite lengthy and progress has not always been steady. The EU can trace its origins back to the Treaty of Paris of 1951, which provided for the creation of the European Coal and Steel Community. Member States subsequently signed the two separate Treaties of Rome of 1957, setting up the European Economic Community (EEC) and the European Atomic Energy Community. Starting in 1967, these three organizations formed what was called the European Community (EC). From the outset, one of the main objectives of the EEC was the creation of a Common Market, for the free movement of goods, services, labour and capital. Customs union was achieved in the late 1960s ahead of the original schedule. The EC became the EU under the Treaty of Maastricht in 1992. The Treaty sets out the steps to Economic and Monetary Union (EMU).

### **C. KEY FEATURES OF THE EUROPEAN UNION, AND THEIR IMPLICIT RELATIONSHIP WITH THE CONCEPT OF FACILITATION OF INTERNAL TRADE**

In early 1985, the EC commissioned a study to quantify the costs of the restrictions imposed by the Member States themselves on mutual trade. The figure arrived at by the study was close to US\$ 224 million. These costs, termed the costs of *Non-Europe*, were attributed to the fact that a single market had yet to be achieved, since national barriers still impeded the free circulation of goods, services, labour and capital within the EU. Against this backdrop, it was decided to give fresh impetus to the process, and in June 1985, a commitment was made to the formation of the Single European Market (SEM) on 31 December 1992. In order to dismantle the barriers that had been identified, the EC decided forthwith to begin the gradual implementation of some 300 initiatives. The timetable for putting these measures into practice was unveiled in an EU *White Paper*. The areas identified were grouped in three categories: *physical, technical and fiscal barriers*.

a) *Physical barriers*, i.e. the range of customs and immigration barriers and controls, which were a continuation of the principle of separation at the community level between national States. There was acknowledgement that border posts entailed additional costs owing to unnecessary delays. The objectives set were to streamline existing procedures and abolish border controls within the EU. Consideration was given to implementing measures aimed at reaching agreement on a raft of controversial issues, including police cooperation on protection of the EU's external borders, firearms control, the fight against drugs trafficking and terrorism, and the simplification of roadside checks.

b) *Technical barriers*, which arose as a result of discrepancies among the individual countries' laws. In short, this affected the following areas:

- The free movement of goods in the European market was undermined by individual Member States' standards and laws, relating primarily to technical aspects and health, public safety and environmental issues.
- As regards the movement of workers, there were problems with taxes and family allowances, while EC nationals who were members of the professions faced obstacles in setting up in the rest of the EC.

- A further type of technical barrier involved national preference, which was applied in public procurement contracts; such contracts typically represent around 15% of the EC's gross output. In view of this situation, standards were enacted in order to ensure transparency in procurement procedures.
- Also viewed as technical barriers were national regulations that blocked the free movement of services. The programme to liberalize this sector of the EC took in the finance industry, in particular banking and insurance, as well as overland and air transport, and newer industries such as telecommunications.

Lastly, it is noteworthy that, in the technical area of economic production, the EC also gave consideration to setting up a legal framework to promote collaboration of firms from their countries, with a view to enabling them to take advantage of European-wide production. As part of this general consideration, a series of measures have even been enacted that show particular concern for small and medium-sized enterprises. This concern arose because SMEs were identified as being the most affected by the heterogeneous nature of national standards in fields such as commercial law, intellectual property, technical regulations and quality standards.

c) *Fiscal barriers*, which basically have to do with problems derived from the discrepancy in rates of value-added tax in force in the different Member States. In this regard, the EC *White Paper* asks that Member States not do anything to exacerbate existing discrepancies, and to make preparations to harmonize indirect tax rates.

Conscious of the huge complexity of securing a single market and that doing so necessarily involves reexamining certain legal principles of the decision-making process, the EC Member States decided to amend the original Treaty. Accordingly, they signed the Single European Act in February 1986. In essence, this instrument created a new institutional framework, with numerous decisions now taken by qualified majority voting instead of unanimity.

It is appropriate at this point to make the following comments concerning the above:

- Notwithstanding the disputes caused by the implementation of the measures aimed at securing the SEM, by January 1993 95% of the nearly 300 initiatives envisaged were already in the execution phase, and at the present time virtually all the measures are in force. Furthermore, measures have been fine-tuned, either at the same time or later on.
- Subsequently, as part of its complex construction process, the EU has successfully given effect to a range of measures concerning matters linked implicitly to a broad definition of facilitation of mutual trade, with the aim of expediting the movement of goods, services, capital and investment among its Member States.
- Although practically all the steps which made the SEM possible are related to implicit aspects linked to a broad definition of the facilitation of trade, this expression itself has never explicitly formed part of any internal negotiation agenda.
- Lastly, notwithstanding the substantial headway achieved in the operation of the SEM, major concerns are today evident in the EU for improving some customs-related matters.

## **D. THE EUROPEAN UNION'S STRATEGY FOR IMPROVING THE CUSTOMS UNION, AND ITS IMPLICIT RELATIONSHIP WITH THE CONCEPT OF THE FACILITATION OF TRADE**

Since 1996, there has been particular concern evident within the EU for streamlining internal customs procedures. In that year, a series of guidelines were established for the purposes of bringing the operations of Member States' customs services into line with one another. With that aim in mind, the EU embarked on a consolidation programme known as "Customs 2000", which is currently in the implementation phase. The initiative has been deemed a success, but thought has been given to making it better still. Accordingly, under "Customs 2002", a new strategy has been formulated incorporating improvements. In this regard, an official EU document proposes that this new strategy be adopted, taking into account the major changes that are currently happening or are set to happen in the coming years, which relate, *inter alia*, to the enlargement of the EU, the growing need for customs to guarantee the security of citizens, and quicker electronic customs clearance.

In short, Customs 2002 basically incorporates new information technologies. Also, one of the programme's key objectives is to avoid operating differences at the national level. To that end, Customs 2002 proposes, *inter alia*:

- Inspection visits to the customs services of EU member countries, to be undertaken by joint teams.
- Upgrading of working methods of customs authorities, such as the use of risk analysis and auditing techniques.
- Exchanges of customs officers from the various authorities in order to broaden their experience.
- Conduct of seminars in order to identify and analyse customs' problematic areas of operation.
- Computerization of customs procedures across the EU.

## **E. THE CONCEPT OF FACILITATION OF TRADE IN THE EUROPEAN UNION**

The EU has never explicitly referred to the concept of facilitation of trade within the Community either before or after the introduction of the Single European Market. Nor is there any organic component within the EU that falls under this heading. Similarly, the EU has yet to produce even a single document, official or otherwise, whose title refers explicitly to facilitation of trade within the Community. In spite of this lack of profile, it can be observed that, beginning in 1995, the concept of facilitation of trade has been used, if not in the titles of specific official Community Regulations, at least in some instances in legislative texts.

In relation to third countries, the EU has used the concept of facilitation of trade in some cases implicitly and in others explicitly. Implicit reference to the concept can, for example, be found in certain customs cooperation agreements in force with third countries. Explicit reference has only been made in isolated instances and not substantively in some parts of the

texts of particular official documents which outline the EU's external economic relations. This was the case, for example, in an EU document that provides details of the concrete progress seen in the bloc's economic relations with Asian countries. There have also been explicit references to the concept in the negotiations that are currently under way between the EU and Chile and the Southern Common Market (Mercosur), the medium-term goal of which is the enactment of free trade agreements.

In any case, whether within the Community or in relation to third countries, the efforts displayed by the EU as regards facilitation of trade have been quite substantial. Still, what is certain is that the headway made internally in this area is far more comprehensive and satisfactory than any results thus far obtained or which will in future be obtained with external economic partners. This explains why the EU is very actively pursuing its goal of gradual irreversible progress on a worldwide scale on this matter. This is also the reason that the EU has adopted a stance very much in favour of concluding talks on binding multilateral rules in relation to facilitation of trade in the WTO.

## **F. THE EUROPEAN UNION'S STANCE IN REGARD TO THE FACILITATION OF TRADE IN THE WORLD TRADE ORGANIZATION**

The EU has called for rules in the WTO to simplify commercial procedures at the multilateral level. The stance adopted by the EU in relation to facilitation of trade has been characterized by the highly pro-active attitude of its representatives in Geneva; in addition, it is the EU delegation that has submitted the largest number of official documents concerning the issue of facilitation of trade to the WTO. It has done all this in order to spur on and organize the relevant negotiations, with a view to achieving concrete policy outcomes, enhancing the transparency and integrity of the countries' customs procedures. Another important dimension is that the UE's position on handling of this issue at the multilateral level is quite broadly-based, since it encompasses a large number of aspects that should be included in the definition of facilitation of trade in the WTO, each of which is well-founded; that means that the issue is seen as a pretty comprehensive and sound concept, and that on the whole it appears to be presented as a somewhat integrated notion.

In addition, the EU has put forward the following basic principles that should form an integral part of any future commitment in the WTO on streamlined commercial procedures:

- Transparency and due process;
- Non-discrimination;
- Less restriction on trade;
- Greater attention to the relationship between development considerations and trade facilitation measures, based primarily on the quest to enhance developing countries' linkages with the international trading system through positive measures and capacity-building initiatives that enable them to undertake appropriate reforms through special,

differentiated treatment.

Moreover, the main areas of facilitation of trade which, according to the official stance of the EU, should be addressed by WTO regulations, can be grouped for ease of analysis into the following points:

- a) The clarification, extension and further development of agreements currently in existence in the WTO, which have to do with a broad definition of the facilitation of trade. In essence, this would involve addressing procedures for the processing of import licences, technical barriers to trade, sanitary and phytosanitary measures, rules of origin, pre-shipment inspection, customs valuation, and trade-related aspects of intellectual property rights. More specifically, the EU proposals in this regard deal with harmonization of customs data, streamlining customs administration and methods, consolidation of all required formalities in a single organization (*one-stop shop*) and automation of export and import procedures through the use of electronic data interchange (EDI) services and greater reliance on electronic commerce.
- b) Issues related to the physical movement of shipments (transport and transit), as well as payments, insurance and other financial matters that have a bearing on cross-border trade in goods. In essence this involves issues related to the physical movement of shipments in relation to trade in services and infrastructure, as well as insurance and other payments.
- c) Matters limited to the customs sphere and border crossing procedures. These basically include the lack of transparency in customs procedures, the limited coordination between the various national bodies responsible for imports and exports, the excessive time required for customs clearance formalities, the lack of quick legal compensation in the event of problems with customs clearance at borders, and corruption and lack of integrity attributable to scarce funding and inadequate skills development.
- d) The possibility of incorporating as binding WTO rules regulations in existence in other intergovernmental/international bodies, whose observance by the countries is voluntary. Essentially, this involves the recommendations on facilitation of trade that emanate from the Revised International Convention on the Simplification and Harmonization of Customs Procedures (“the Revised Kyoto Convention”), adopted by the World Customs Organization, and use of the United Nations system for Electronic Data Interchange for Administration, Commerce and Transport, better known by its acronym, UN/EDIFACT.

It is appropriate to conclude this Bulletin with two remarks. Firstly, the EU proposal relating to the facilitation of trade in the WTO has even gone so far as to consider the need to make some institutional reforms in the way the multilateral agency functions, primarily in the method of operation of the various committees that are to some extent involved with aspects related to facilitation of trade in the broad sense. Secondly, the UE’s position of considering many issues in relation to the facilitation of trade in the WTO has gradually been moderated and restricted, in recognition of the need for consensus on the issue ahead of the next round of multilateral

trade negotiations. With that in mind, the EU, aware that it is basically a question of initiating a process, supports for the time being placing the emphasis exclusively on new issues related to the simplification and modernization of border customs procedures, and the review of the above-mentioned agreements currently in existence in the WTO that involve a broad definition of the facilitation of trade.

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[1] The original members were France, Italy, the Federal Republic of Germany and the Benelux, comprising Belgium, the Netherlands and Luxembourg. Denmark, Great Britain, Ireland, Greece, Spain, Portugal, Finland, Austria and Sweden all subsequently became members.

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