WORLD TRADE ORGANIZATION

G/L/244
15 May 1998

(98-1944)

Council for Trade in Goods

WTO TRADE FACILITATION SYMPOSIUM: 9-10 MARCH 1998

WTO rules relevant to Trade Facilitation

Statement by Mr. Heinz Opelz, Director, Market Access Division

INTRODUCTION

1. The legal framework of the WTO contains numerous Articles and provisions in Agreements which have a direct relation to facilitating the movement of consignments across borders. In the GATT 1994, Articles V (Freedom of Transit), Article VII (Valuation for Customs Purposes), Article VIII (Fees and Formalities connected with Importation and Exportation), Article IX (Marks of Origin), and Article X (Publication and Administration of Trade Regulations) contain obligations for Members which are aimed at easing the conduct of international trade transactions.

2. In addition, several WTO Agreements have a direct bearing for trade facilitation. These are the Agreements on Customs Valuation, Import Licensing Procedures, Preshipment Inspection, Rules of Origin, Technical Barriers to Trade, as well as the Agreement on the Application of Sanitary and Phytosanitary Measures.

3. The *General Agreement on Trade in Services* (GATS) with its annexed schedules provides for liberalization in a number of service industries which are vital for the facilitation of trade, e.g. transport, financing, telecommunications. The *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS) contains a section on border measures which allows Members to take specific measures to prevent the inflow of counterfeit and pirated goods.

ARTICLE V - FREEDOM OF TRANSIT

4. Article V deals with "traffic in transit". It states that "there shall be freedom of transit through the territory of each Member for traffic in transit to or from the territory of other Members...". Further, it states that "...except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other Members shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or ... administrative expenses ...". It establishes Most-Favoured-Nation (MFN) treatment for such transit with respect to all charges, regulations and formalities.

ARTICLE VIII - FEES AND FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

5. Article VIII of GATT 1994 stipulates that all fees and charges (other than import and export duties and taxes covered by Article III) imposed on or in connection with importation or exportation

(a) must be "limited in amount to the approximate cost of services rendered";
(b) must not "represent an indirect protection to domestic products";
(c) must not "represent ... a taxation of imports ... for fiscal purposes".

Members recognize that the number and diversity of such fees, and the incidence and complexity of import and export formalities should be reduced. Further, documentation requirements should be lessened and simplified.

6. "Service" in the sense of Article VIII is not to be taken in the economic sense of "service", but as "government activities closely enough connected to the processes of customs entry".

Agreement on Import Licensing Procedures

7. The Agreement on Import Licensing Procedures deals more specifically with some of the procedural aspects of Article VIII. It recognizes that import licensing procedures can have acceptable uses, but also that their inappropriate use may impede the flow of international trade. It establishes disciplines on the users of import licensing systems to ensure that the procedures applied for granting both "automatic" (where a license is granted in all cases, used normally to establish trade statistics) and "non-automatic" import licences (which usually serve to administer quantitative or other restrictions on imports) do not in themselves restrict or distort trade. WTO Members commit themselves to simplifying and bringing transparency to their import licensing procedures and to administering them in a neutral and non-discriminatory manner. The Agreement sets up time-limits for the publication of information concerning licensing procedures, for processing of licence applications, and for notification to the Committee on Import Licensing.

8. The Agreement requires prior publication of rules and all information concerning procedures for the submission of applications for licences, including the eligibility of persons, firms or institutions to make such applications, the administrative bodies to be approached, and the list of products subject to the licensing requirement, in such a manner as to enable governments and traders to become acquainted with them. The Agreement further requires application forms for import licences and renewal forms to be as simple as possible. Foreign exchange is to be made available for licensed imports on the same basis as for goods not requiring import licences (Article 1.9).

ARTICLE IX - MARKS OF ORIGIN

9. The Article establishes MFN treatment with respect to marking requirements. It emphasizes that the difficulties and inconveniences to the commerce and industry of exporting countries of adopting and enforcing laws relating to marks of origin should be reduced to a minimum. Whenever practicable, required marks should be permitted to be affixed at the time of importation. In addition, Members should cooperate to prevent the use of trade names in such manner as to misrepresent the true origin of a product, to the detriment of protected distinctive regional or geographical names of products.

ARTICLE X - PUBLICATION AND ADMINISTRATION OF TRADE REGULATIONS

10. The purpose of this Article is in the first place to achieve transparency. It requires each Member to promptly publish all laws, regulations, judicial decisions and administrative rulings affecting imports and exports. In addition, "agreements affecting international trade policy which are in force" between two Members shall also be published. Measures imposing a new or more burdensome requirement, restriction, or prohibition on imports, or on the transfer of payments, shall be published before enforcement. Each Member shall further maintain or institute "judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review and correction of administrative action relating to customs matters".

11. Article X:3 provides for uniform, impartial, and reasonable administration of laws, decisions and rulings affecting import and export.

ARTICLE VII - VALUATION FOR CUSTOMS PURPOSES

Agreement on Customs Valuation

12. Article VII lays down the main principles governing the valuation of imports for assessment of duties or other charges (not including internal taxes). It establishes that this assessment should be based on the "actual value of the imported merchandise, or of like merchandise, and should not be based on the value of merchandise of national origin or on arbitrary or fictitious values". The Article defines "actual value".

13. Interpretation and application of this Article has been more clearly specified in the Tokyo Round and Uruguay Round Agreements on Implementation of Article VII of GATT 1994" (Agreement on Customs Valuation) which establishes the rules for valuing imports for the assessment of ad valorem customs duties. As most countries today assess duties on the basis of an ad valorem system, the method in which customs authorities value imported goods is of paramount importance. Harmonization of the methodology used by countries for valuing imports creates predictability and transparency for exporters and importers transacting in the international marketplace. The Agreement stipulates that the price for customs purposes shall be the transaction value, that is the "price actually paid or payable for the goods when sold for export to the country of importation adjusted in accordance with the provisions of [the Agreement]". The Agreement provides for the establishment of an adequate legal and judicial framework which would ensure the right of appeal for importers. In addition, the Agreement stipulates that customs authorities must release goods to importers with the posting of a guarantee or surety, in cases where further investigation is required.

14. Currently, the WTO is in the process of devising a technical assistance programme to enable those developing countries which have invoked a 5-year delay period for the application of the Agreement, to implement the Agreement when their transition period expires.

Agreement on Preshipment Inspection

15. The Agreement on Preshipment Inspection was negotiated with the aim of reducing any non-tariff barriers that could result from the use of private agents to conduct quantity, quality and price inspection of imports. The Agreement does not encourage countries to use PSI, but recognizes that some countries might employ such private entities on a transitional basis. As the WTO applies among governments, the Agreement can only be implemented through Members imposing its provisions on these entities through their contracts with them. In establishing a set of provisions for the carrying out of these inspection activities, the Agreement harmonizes the rules for the carrying out of preshipment inspection activities world-wide. A Working Party has been established to review the functioning of the Agreement. The Working Party has produced a report which contains recommendations which should lead to an improvement of the practices surrounding PSI activities.

Agreement on Rules of Origin

16. The Agreement on Rules of Origin aims mainly at harmonization of non-preferential rules of origin, and seeks to ensure that such rules do not themselves create unnecessary obstacles to trade. The Agreement sets out a 3-year harmonization work programme for non-preferential rules of origin to be undertaken in conjunction with the WCO. The underlying principle is that the originating status of a good should be either the country where the good has been wholly obtained or, when more than one country is concerned in its production, the country where the last substantial transformation has

been carried out. Harmonization work started officially in July 1995, which means that the work has a deadline for completion by July 1998.

17. Until the completion of the harmonization work programme, Members shall ensure that their rules of origin do not discriminate between Members; the rules of origin shall be clearly defined and transparent; they must be administered in a consistent, uniform, impartial and reasonable manner and be based on a positive standard. Members have to publish their rules of origin promptly; any administrative action in relation to the determination of origin shall be promptly reviewable by judicial, arbitral or administrative tribunals or procedures independent of the authority issuing the determination; such findings can modify or reverse the determination. Upon request, assessments of origin shall be issued as soon as possible but no later than 150 days after such a request is received.

18. The Agreement on Rules of Origin contains also a Declaration on preferential rules of origin which does not foresee harmonization of such rules, but establishes disciplines very similar to the ones for non-preferential rules of origin.

Agreement on Technical Barriers to Trade

19. The TBT Agreement recognizes that product standards, technical regulations and conformity assessment procedures are essential for the functioning of modern economies. The WTO does not develop product standards, nor does it require its Members to have such standards. Rather, the TBT Agreement allows Members to develop their own technical regulations, standards and conformity assessment procedures for certain legitimate purposes, such as the protection of human, animal, plant life or health, of the environment, or for the prevention of deceptive practices, and seeks to ensure that no unnecessary obstacles to trade are constituted. Technical regulations shall not be more trade restrictive than necessary to fulfil a legitimate objective. Product regulations shall, where appropriate, be specified in terms of performance rather than design or descriptive characteristics.

20. The Agreement lays down the principle of non-discrimination between Members and encourages them to use existing international standards in the development of their national regulations. Members are to give positive consideration to accepting, as equivalent, technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations. Finally, the Agreement encourages Members to enter into mutual recognition agreements for the acceptance of conformity assessment procedures.

Agreement on the Application of Sanitary and Phytosanitary Measures

21. The SPS Agreement contains several provisions which relate to facilitating the flow of goods across borders. A fundamental obligation in this respect is that Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members, where identical or similar conditions prevail, including ensuring national treatment. Moreover, sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade (Art. 2.3). In addition, there are a number of more specific provisions related to trade facilitation, particularly regarding harmonization of SPS measures, equivalence, recognition of disease-free areas, transparency, and control, inspection and approval procedures.

22. The Agreement encourages the use of international standards, guidelines and recommendations, thus enhancing transparency and security. The Agreement provides that Members shall accept SPS measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members. The onus to demonstrate equivalence rests with the exporting Member. Moreover, the Agreement encourages Members to enter into consultations with the aim of achieving bilateral and multilateral equivalence agreements (Art. 4). Members are required

to notify any new or chan-ged sanitary and phytosanitary requirements which affect trade. They also have to set up Enquiry Points to respond to requests for any additional information on new or existing measures, including on how they apply their food safety and animal and plant health regulations. Annex C to the Agreement establishes detailed provisions aiming at rendering the control, inspection and approval procedures non-discriminatory and as efficient as possible taking into account legitimate commercial interests.

General Agreement on Trade in Services (GATS)

23. Under the *general obligations* of the GATS, the Most-Favoured-Nation rule (Article II) applies to all service sectors, regardless of whether a Member has undertaken specific commitments; this means that if a Member has no market access and national treatment commitments it must still not discriminate between suppliers of other Members. The obligation of transparency (Article III) requires Members to publish all measures of general application affecting trade in services and to notify the WTO of any changes in laws and regulations affecting trade in services in sectors where specific commitments have been undertaken. The rules on domestic regulation (Article VI) require Members: (i) to administer all measures of general application in an reasonable, objective and impartial manner; (ii) to maintain or institute appropriate procedures and remedies for the review of administrative decisions affecting trade in services; (iii) to provide for adequate procedures to verify the competence of professionals of other Members in sectors where specific commitments have been undertaken.

24. Under the specific commitments, the GATS covers all types of transport services, with the exception of air traffic rights. In the Uruguay Round 46 Members made commitments in maritime transport services, 51 in air transport, 32 in rail transport and 48 in road transport. The maritime transport sector includes sub-sectors such as international freight and passenger transport, maritime cargo handling, storage and warehousing services, customs clearance services, container station and depot services, maritime agency services and maritime freight forwarding services. It has been agreed that negotiations on maritime services will resume in the year 2000.

25. Fifty-four WTO Members have commitments in *Electronic data interchange* (EDI), a value added telecommunication service.

26. Obviously, modern *telecommunications* systems do provide new opportunities and means to facilitate trade in goods and services. Internet services are a sub-sector on which some Members have undertaken specific commitments in the Uruguay Round or in the recent telecommunications negotiations. Internet services include at least three value-added telecommunications services covered by the GATS: electronic mail, on-line information and data base retrieval and electronic data interchange (EDI). Currently 61 WTO Members have commitments in electronic mail, 63 in on-line information and data base retrieval and 54 in EDI.

27. As concerns *Financial Services*, at the end of the negotiations on 12 December 1997 a total of 70 countries made commitments.

28. As concerns *Distribution Services,* a total of 47 Members, including all industrialised economies, have undertaken commitments in the Uruguay Round (45 in wholesale trade services, 44 in retailing services, 34 in franchising and 32 in commission agentsÿ services).

Agreement on Trade-Related Aspects of Intellectual Property Rights

29. The TRIPS Agreement establishes minimum standards for intellectual property rights protection and enforcement. In WTO terms, these are internal policy instruments that do not, in general, give rise to action at the border. There is, however, one significant exception, in the section of the Agreement on Special Requirements Related to Border Measures. It concerns a specific

procedure, commonly known as "special border measures" by which right holders can obtain the assistance of customs authorities in suspending the release of goods, suspected of being counterfeit or pirated, into free circulation. This acts as a sort of "safety net" to deal with cases where there has been no effective enforcement in the country of production.

30. The special border measures have two basic objectives: one is to ensure that effective means of enforcement are available to right holders; the second, which is more directly relevant to trade facilitation, is to ensure that enforcement procedures are applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse. The provisions on special border measures stipulate certain requirements designed to this effect. These are intended to dissuade right holders from making groundless applications and to protect the position of the importer, owner and consignee of the goods, whilst still permitting effective action at the border against counterfeit trademark and pirated copyright goods.

_____