

WORLD TRADE ORGANIZATION

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Council for Trade in Goods
25 March 1999

REPORT OF THE WORKING PARTY ON PRESHIPMENT INSPECTION

Section A

1. The Working Party on Preshipment Inspection (hereafter the Working Party) was established by the General Council at its meeting of 7, 8 and 13 November 1996, with a mandate to conduct the review provided for under Article 6 of the Agreement on Preshipment Inspection, and to report to the General Council through the Council for Trade in Goods (CTG) by December 1997.
2. On 10 December 1997, the Working Party, under the Chairmanship of Mr. Chiedu Osakwe (Nigeria), presented its report, contained in document G/L/214 dated 2 December 1997, to the General Council, which adopted it. Based on the recommendations made by the Working Party, it was agreed to extend the life of the Working Party for one year, until the end of 1998.
3. During 1998, under the Chairmanship of Mr. Edward Brown (United Kingdom), the Working Party held four formal meetings and five informal meetings to exchange views on the items identified in its December 1997 report. During the informal meetings the views of various international organizations were heard, as well as those from IFIA (the International Federation of Inspection Agencies), the ICC (International Chamber of Commerce), and a firm of PSI auditors. Additionally the subject of trade facilitation, following a mandate from the CTG in September 1998 to include it on future agendas, was discussed. The Working Party submitted its report to the General Council, through the CTG, on 10 December 1998 (G/L/273). The General Council adopted the report thereby agreeing to a further extension of the Working Party until 31 March 1999.
4. The following report should therefore be read in conjunction with the Working Party's 1997 and 1998 reports to the General Council.

Section B

Background

5. The objectives of government-mandated Preshipment Inspection (PSI) programmes have evolved since the early 1960s. Initially they were used almost exclusively to address exchange control concerns, but in more recent years, as trade has become liberalized and exchange controls have been removed, the emphasis of PSI programmes has shifted towards revenue collection. Primarily PSI aims to detect false invoicing, and ensure governments receive the correct revenue.
6. The main features of PSI programmes are:
 - inspecting goods in the country of export prior to shipping to the country of destination. This entails verifying the price paid by the importer, in accordance with Article 2.20(b) of the PSI Agreement, and checking that the goods conform to the relevant agreed contractual

specifications as well as the relevant quality and quantity controls in force in the country of destination.

- some countries limit inspections to a range of sensitive products, all of which are subject to 100 per cent inspections; and others have an across-the-board inspection programme, again subject to 100 per cent inspections. Currently 35 WTO Members employ the services of PSI companies, which are accredited to IFIA. A list of the IFIA agents, and the countries using their services, is provided in Annex A.

The Aims of User Countries

7. The intention of countries using PSI has been to ensure the correct classification and valuation of imports and to assist in revenue collection. All Members have accepted that recourse to PSI is a transitional measure to be used only until their national customs authorities are in the position to carry out these tasks on their own. Most user Members expressed satisfaction with their PSI programs and the benefits it had brought, and some expressed the view that by having such programs trade has been facilitated, which would not otherwise have been the case. However one former user Member considered that their program had not met any of the goals listed above, had not facilitated trade, and the costs of the PSI program had exceeded the revenue collected.

The main concerns of exporters

8. In response both the governments and traders of many exporter countries have claimed that recourse to PSI has created delays to shipments and incurred additional costs to international trade. They raised concerns that on occasion PSI companies resorted to arbitrary methods, failed to keep inspection appointments, required additional documentation, demanded confidential business information, and arbitrarily uplifted invoice values. Yet a number of exporters (including some whose governments use PSI) have expressed their general satisfaction with the implementation of the Agreement.

Complaints Procedures

9. Mechanisms exist to resolve complaints through the PSI company concerned, the user Members' appeals procedures or the Independent Entity, established under Article 5 of the PSI Agreement. To date, exporters have been reluctant to use the Independent Entity. The ICC suggested that the non-use of the Independent Entity might be because the provisions of the Agreement have removed some of the principal sources of disputes between inspection agencies and exporters, or because of exporters' concern that identifying themselves to the PSI companies could result in aggravating rather than alleviating the situation, or because of the costs associated with its use. IFIA was of the view that in many cases problems had been settled between the PSI companies and the exporters concerned.

Section C

1998 Work Programme

10. The Working Party's exchange of views focused on seven issues (listed below) which were contained in its 1997 report (G/L/214). Additionally, the Working Party considered the relationship between PSI and trade facilitation, as well as technical assistance as envisaged in Article 3 of the Agreement.

Issue 1: Model contract between governments and PSI companies

11. Early in the year Switzerland submitted a proposal, circulated in G/PSI/WP/W/16, for a model contract between governments and PSI companies; a copy of the model contract can be found in Annex B. The Working Party broadly supported the aim of the contract on the understanding that it was of a non-binding nature, and that in no way could it affect the rights and obligations of Members under the Agreement. Some delegations felt that the value of the model contract was that it offered a method of incorporating the provisions of the PSI Agreement into the contracts of user Members. But equally the Working Party accepted that governments, in drawing up their own contracts, would also ensure compatibility with the PSI Agreement.

12. The Working Party also noted that IFIA members had their own code of conduct, distinct from the model contract, and welcomed the move by IFIA to introduce measures whereby their members' adherence to the code would be monitored and corrected if necessary.

Issue 2: Standardization of inspection documentation

13. The Working Party welcomed the opportunity to hear the views of the ICC and IFIA on how standardization of documentation could reduce obstacles to trade created by different PSI companies using different forms. Both the ICC and IFIA have already identified three forms for standardization (data sheets for exporters, requests for information forms, results of physical inspection), and have agreed to work together in identifying other possible areas, including computer software, that could be standardized. The Working Party suggested to both parties that the UNECE Standard Layout Key should be followed wherever possible. Assuming that standardization of documentation proceeds, it may well be that interest increases with exporters in having a greater choice of PSI firms, as such standardization would enable one form to be used irrespective of the PSI firm, in contrast to the present situation where different forms exist for the same procedure. The merits of competition among PSI companies in a contract with one Government is discussed in paragraph 16.

Issue 3: Selective examination of shipments

14. The Working Party heard from the World Customs Organization that a feature of good customs practices is the random inspection of goods based on risk management and selection techniques. In particular it was shown that rather than requiring inspection on a transaction-by-transaction basis, customs authorities used risk profiles that identified consignments where inspection was needed. It was also shown that in addition to random inspection, post-entry and account-based compliance methodologies assisted in the effective operation of customs administrations and it was suggested that governments should endeavour to use such procedures. IFIA has confirmed that selective inspection would be possible to institute and has proposed two possible approaches. These are reproduced in Annex D of the report. Nevertheless, the use of selective examination of shipments remains a decision of each Member.

Issue 4: Auditing of PSI entities

15. The Working Party acknowledged that whilst auditing *per se* is widely understood and used, the auditing of PSI entities is a new phenomenon. Unlike conventional auditing, the role of PSI auditing is primarily to monitor the price-verification activities of PSI companies to ensure their accuracy and objectivity. At present only two user Members use the sole firm of PSI auditors, and both have expressed their satisfaction with the positive experience and the results they have obtained in achieving greater transparency and ensuring the effective control of PSI services. The Working Party was grateful for the useful presentations made by the auditing company and its attorneys, in explaining their function, as well as the observations and contribution of IFIA which led to a lively debate. The Working Party noted that user Members may wish to consider the potential benefits of PSI auditing as indicated by the two Members using PSI auditing. If governments currently using PSI agents choose to employ auditors, they should ensure that the rights of traders are not adversely

affected, for example by causing additional delays or costs to the movement of goods and that the PSI Agreement is not violated. The Working Party suggests that the guiding principles, listed in Annex C, supplied by the European Communities, should be considered.

Issue 5: Promotion of competition amongst PSI agents

16. Similarly the notion of competition is well-known, but the Working Party is unable to comment on whether engaging more than one PSI agent necessarily results in benefits for exporters/importers or creates competitive conditions. Certainly from what the Working Party heard from Members using more than one firm, there is nothing to suggest that such practice is any more detrimental to the effective functioning of the Agreement than employing only one company; but the choice must remain with governments, based on their consultations with traders. The Working Party did not consider it appropriate to recommend the automatic adoption of competitive bidding amongst PSI companies for those Members currently using PSI companies.

Issue 6: Fee structures for PSI entities

17. The Working Party appreciated IFIA's input to this complicated debate. The Working Party's discussion centred on whether *ad valorem* fees charged by PSI agents and based on their price evaluations as contained in the "Clean Report of Finding" (CRF) were an incentive for the PSI agent to increase the values of the CRFs so as to attract a higher fee. The Working Party acknowledges IFIA's agreement to consider charging fees, subject to current contractual obligations, on an *ad valorem* rate of the declared value instead of an *ad valorem* fee based on the clean report of finding (CRF). Some Members raised concerns about the use of *ad valorem* fees and their conformity with GATT Article VIII and considered that flat-fees should be charged for services rendered. In the meantime, the Working Party considered that new contracts should not use fee structures based on *ad valorem* rates as contained in the clean reports of findings. Further discussion on this topic is needed but the Working Party noted the firm views of some Members that, whichever method is used, the fees should be borne by the user government and not the traders and must conform to the provisions of GATT Article VIII. The Working Party also noted the firm views of other Members that it is up to each user Member to determine who should bear the fees, and that this is a matter not explicitly addressed in the PSI Agreement. The Working Party also observed that several Members were currently charging PSI fees to importers.

Issue 7: Price databases

18. The Working Party noted that it is an accepted practice for modern customs administrations to use, as part of their risk management and assessment indices, a database (confidential or not) containing carefully selected information covering factors such as price, weight, volume, name of shipper, origin of the goods, etc., in order to determine whether a particular shipment was bona fide. Where relevant, confidential business information in such databases should be protected. This highlights that price is but one element in determining whether goods require inspection and hence the concern of some Members who felt that undue emphasis on a database containing solely reference prices could lead to arbitrary valuation.

19. Some delegations shared Colombia's views, as explained in its communication in G/PSI/WP/W/22, that having price databases would be a useful stepping stone in the transition to modern customs administrations and the withdrawal of PSI Services. Other Members continued to have concerns with the potential misuses of such databases, as mentioned in a communication from the United States in G/PSI/WP/W/20. The Working Party agreed that price databases must not be used to determine minimum prices, or applied in a way that is inconsistent with the Agreement on Implementation of Article VII of the GATT 1994 (commonly referred to as the Agreement on Customs Valuation) and in particular the provision contained in Article 7.1 thereof.

Trade facilitation

20. The Working Party discussed this issue in response to a request from the Council for Trade in Goods, at its meeting of 5 June and 8 July, that its sub-committees and working parties add this item on to their formal agenda. From these discussions in the informal group, two themes emerged. The first is that any improvement to the efficient functioning of the Agreement, as identified above, will in itself help to facilitate trade. The second is that facilitation measures, notably the modernisation and reform of customs procedure, through the adoption of international standards and practises for documentation and data, coupled with introduction of modern customs techniques by national customs authorities, will make it easier for countries to move away from PSI systems, leading ultimately to better use of resources, improved revenue collection and control, and greater facilitation of trade.

Technical assistance

21. Technical assistance as envisaged under Article 3 of the PSI Agreement was intended to assist developing countries in making the transition from PSI. Therefore the issue of technical assistance in this context is extremely broad, covering customs valuation and procedures as well as customs management. Consequently technical assistance currently provided to developing countries by international governmental organizations such as the WCO, WTO, UNCTAD and World Bank, as well as regional and bilateral initiatives, to ensure the full implementation of the Agreement on Customs Valuation, is highly relevant. Therefore assistance received in this domain should in itself assist towards the eventual phasing out of PSI.

Section D

Recommendations

22. The Working Party therefore concludes that in addition to the recommendations made in its 1997 report, the following should be added:

- (a) that governments must ensure that contracts are in conformity with the provisions of the PSI Agreement; and encourage Members to consider following the model contract wherever possible;
- (b) that governments should examine incorporating the principles of selectivity and risk assessment in their contracts;
- (c) that governments who consider having their PSI programmes audited should be guided by the principles found in Annex C, or ensure that when alternative criteria are used, the principles contained in the PSI Agreement, such as non-discrimination and national treatment, are respected; and
- (d) that developed countries ensure that developing countries receive the necessary technical assistance for domestic capacity building in order that the transition away from PSI can be made.

23. The Working Party further recommends that future monitoring of the Agreement should be undertaken initially by the Customs Valuation Committee, and that PSI should be a standing agenda item.

ANNEX A**PSI PROGRAMMES
as at 4 March 1999**

COUNTRY	TYPE FOREX/CUSTOMS	PSI COMPANIES	SPLIT GEOGRAPHICAL/ IMPORTERS CHOICE
ANGOLA	FOREX/CUSTOMS	SGS	-
ARGENTINA	CUSTOMS	BIVAC, ITS, INSPECTORATE, SOCOTEC, CONTROL UNION, SGS	IMPORTERS CHOICE
BANGLADESH ¹	CUSTOMS	BIVAC, ITS, INSPECTORATE, OMIC	IMPORTERS CHOICE
BENIN	FOREX/CUSTOMS	BIVAC	-
BOLIVIA	CUSTOMS	INSPECTORATE, SGS	IMPORTERS CHOICE
BURKINA FASO	CUSTOMS	SGS	-
BURUNDI	FOREX	SGS	-
CAMBODIA	CUSTOMS	SGS	-
CAMEROON	CUSTOMS	SGS	-
CENTRAL AFRICAN REPUBLIC	CUSTOMS	SGS	-
COLOMBIA	CUSTOMS	BIVAC, COTECNA, ITS	IMPORTERS CHOICE
COMOROS ²	FOREX/CUSTOMS	COTECNA	-
COTE D'IVOIRE	CUSTOMS	SGS	-
DEM. REP. OF CONGO	CUSTOMS	SGS	-
ECUADOR	CUSTOMS	BICAC, COTECNA, ITS, SGS	IMPORTERS CHOICE
GHANA	FOREX/CUSTOMS	GSBV, COTECNA, ITS, SGS	GEOGRAPHICAL
GUINEA	CUSTOMS	SGS	-
INDIA	EXPORT PROMOTION CAPITAL GOODS SCHEME	BIVAC, INSPECTORATE, SGS	IMPORTERS CHOICE
IRAN ³	QUALITY/ QUANTITY	BIVAC, COTECNA, INSPECTORATE, ITS, OMIC, SGS	IMPORTERS CHOICE
KENYA	CUSTOMS	BICA, COTECNA, SGS	GEOGRAPHICAL
LIBERIA	CUSTOMS	BIVAC	-
MADAGASCAR	FOREX/CUSTOMS	BIVAC	-
MALAWI	CUSTOMS	SGS	-
MAURITANIA	CUSTOMS	SGS	-
MALI	FOREX/CUSTOMS	SGS	-
MEXICO ⁴	CUSTOMS	BIVAC, ITS, SGS	IMPORTERS CHOICE
MOZAMBIQUE	FOREX/CUSTOMS	ITS	

¹ Voluntary PSI programme.

² To be re-implemented on April 1st, 1999.

³ Only covers quality and quantity of importers' contractual specifications.

⁴ Goods of certain categories and origins published in Article 10 of the "Agreement on Automatic imported Advice" are subject to PSI if their unit value is inferior to estimated prices published by the Government.

NIGER	FOREX/CUSTOMS	COTECNA	
NIGERIA	FOREX/CUSTOMS	BIVAC, ITS (SWEDE CONTROL), ISC	GEOGRAPHICAL
PARAGUAY	CUSTOMS	BIVAC, SGS	IMPORTERS CHOICE
PERU	CUSTOMS	BIVAC, COTECNA, SGS	IMPORTERS CHOICE
PHILIPPINES	CUSTOMS	SGS	-
RWANDA	FOREX/CUSTOMS	SGS	-
SENEGAL	CUSTOMS	SGS	-
SIERRA LEONE	FOREX/CUSTOMS	BIVAC	-
TANZANIA	CUSTOMS	SGS	-
TOGO	FOREX/CUSTOMS	COTECNA	-
UGANDA	CUSTOMS	ITS	-
UZBEKISTAN	FOREX	ITS	-
ZANZIBAR	FOREX	SGS	-

Although it is not the policy of IFIA to maintain lists of PSI Programmes, this list has been exceptionally compiled by the IFIA Pre-Shipment Inspection Committee in answer to a request from the WTO Secretariat. Every effort has been taken to ensure the correctness of this list as at the date of issue but since it will be subject to change, from time to time, the details should be verified directly with the PSI companies concerned.

ANNEX B

Model Agreement on Preshipment Inspection

Proposal by Switzerland

1. General provisions

- 1.1 The present Agreement is concluded between the ... (*Government*) and the (*PSI Company*) (hereinafter referred to as "Contracting Parties") under the principles and obligations of the WTO Agreement on Preshipment Inspection (hereinafter referred to as the "PSI Agreement (WTO)").
- 1.2 It will enter into force after 60 days in order to allow for sufficient time to inform exporters and importers.
- 1.3 The (*PSI Company*) shall abide by applicable laws, regulations or requirements of the (*Government*) in accordance with the provisions of the PSI Agreement (WTO).
- 1.4 In implementing the present Agreement the (*Government*) will apply the relevant provisions of the PSI Agreement (WTO).
- 1.5 The (*PSI Company*) undertakes the obligation to perform preshipment activities in conformity with the PSI Agreement (WTO).

2. Scope of inspection

- 2.1 The PSI activities performed by the (*PSI Company*) may include the following services:
 - (a) quality and quantity inspections, in accordance with Article 2.4 of the PSI Agreement (WTO);
 - (b) price verification, including technical advice for purposes of customs valuation, in accordance with Article 2.20 of the PSI Agreement (WTO);
 - (c) customs classification.

3. Site of inspection

- 3.1 All preshipment activities, including the issuance of a Clean Report of Findings (CRF) or an advice of non-issuance of CRF, shall be performed in the customs territory from which the goods are supplied or, if the inspection cannot be carried out in that customs territory given the complex nature of the products involved, or if both parties agree, in the customs territory in which the goods are manufactured.

4. Transparency/information

- 4.1 The (*PSI Company*) shall make available to exporters in a convenient manner all necessary information referred to in Article 2, para. 6 of the PSI Agreement (WTO) as well as references of new or amended laws or regulations relating to preshipment inspection activities received from (*Government*).

4.2 The *(Government)* undertakes to provide the *(PSI Company)* with all related laws, regulations and requirements 60 days prior to the commencement of the PSI programme. It will also inform the *(PSI Company)* immediately of any amendments thereafter.

5. Confidentiality

5.1 The *(PSI Company)* shall treat all information received in the course of the preshipment inspection as business confidential to the extent that such information is not already published, generally available to third parties, or otherwise in the public domain. The *(PSI Company)* shall not divulge confidential business information to any third party.

5.2 In pursuance of this provision the *(PSI Company)* shall establish adequate security measures relating to their offices and employees.

5.3 Notwithstanding paragraph 1 the *(PSI Company)* may share confidential business information with the *(Government)*, but only to the extent that such information is customarily required for letters of credit or other forms of payment or for customs, import licensing or exchange control purposes.

5.4 The *(PSI Company)* shall not request exporters to provide information regarding:

- (i) manufacturing data related to patented, licensed or undisclosed processes, or to processes for which a patent is pending;
- (ii) unpublished technical data other than data necessary to demonstrate compliance with technical regulations or standards;
- (iii) internal pricing, including manufacturing costs;
- (iv) profit levels;
- (v) the terms of contracts between exporters and their suppliers unless it is not otherwise possible for the *(PSI Company)* to conduct the inspection in question. In such cases, the *(PSI Company)* shall only request the information necessary for this purpose.

6. Conflicts of interest

6.1 The *(PSI Company)* confirms that it maintains procedures to avoid any conflicts of interest as defined in Article 2.14 of the PSI Agreement (WTO). The *(PSI Company)* shall inform the *(Government)* on these internal procedures and on any amendments thereto.

7. Technical advice concerning customs valuation principles

7.1 Price verification by the *(PSI Company)* for customs purposes shall be limited to the provision of technical advice to facilitate the determination of customs value by the *(Government)*.

7.2 When forming an opinion of a value for customs purposes the *(PSI Company)* shall not require the seller to amend the price in the commercial invoice for payment purposes.

7.3 When providing technical advice on customs valuation, the *(PSI Company)* shall use the customs valuation methodology as notified by the *(Government)* to the WTO. The *(PSI Company)* shall inform exporters of the methodology applied.

7.4 The (*Government*) encourages the (*PSI Company*) to utilize electronic means for purposes of providing required information to exporters and importers.

8. Standards

8.1 Quantity and quality inspections shall be performed in accordance with the standards defined by the seller and the buyer in the purchase agreement or, in the absence of such standards, in accordance with relevant international standards and practice.

9. Appeals and independent review procedures

9.1 In case of a dispute between an exporter and the (*PSI Company*), the parties to the dispute shall abide by the procedures set forth in Article 2.21 (Appeals Procedures) and Article 4 (Independent Review Procedures) of the PSI Agreement (WTO).

9.2 The (*PSI Company*) shall establish procedures to receive, consider and render decisions concerning grievances raised by exporters, and shall make information concerning such procedures available to exporters in accordance with the provisions of Article 2.6-7 of the PSI Agreement (WTO). The procedures shall be developed and maintained according to the guidelines set forth in paragraphs 3-6 below.

9.3 The (*PSI Company*) shall designate one or more officials who shall be available during normal business hours in each city or port in which they maintain a preshipment inspection administrative office to receive and give sympathetic considerations to, and render decisions on, exporters' complaints or appeals which should be carried out in accordance with the procedures of paragraphs 4 and 5 below.

9.4 Complaints to the (*PSI Company*):

- (i) In the first instance, exporters with any complaints concerning preshipment inspection activities should be requested to contact the appropriate Department Manager of the (*PSI Company*) giving details of the case.
- (ii) The (*PSI Company*) shall undertake to investigate the complaint expeditiously.
- (iii) If the exporter is not satisfied with the response from the (*PSI Company*), the exporter may proceed to an Appeal in accordance with the procedures of paragraph 5 below.

9.5 Appeals to the (*PSI Company*):

- (i) Exporters having grievances concerning preshipment inspection activities, which have not been resolved by discussion with appropriate Department Manager of the (*PSI Company*), may appeal to the (*PSI Company*)'s senior management.
- (ii) The (*PSI Company*)'s designated Senior Manager should undertake to investigate the dispute and respond to the exporter, normally within two working days of receipt of the Appeal, by either (a) giving the result of the Appeal or (b) advising that further investigation is required and that the result will follow as soon as possible.

9.6 Details of the procedure of paragraphs 4 and 5 above will be made available to exporters by the (*PSI Company*).

ANNEX C

Guiding principles for the use of PSI auditing

The auditing process:

- (1) should not lead to duplication of PSI work;
- (2) should always apply consistently with GATT and WTO principles and Agreements;
- (3) should be undertaken by entities that satisfied reliable auditing credentials; and
- (4) should be undertaken under conditions of independence, confidentiality and integrity.

ANNEX D

INTERNATIONAL FEDERATION OF INSPECTION AGENCIES
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To: Mr. Edward Brown
Chairman, WTO Working Party on Preshipment Inspection

Subject: Selective Inspection

Dear Mr. Brown,

Thank you for your letter dated 2 March 1999.

We wish to reconfirm the statement made by IFIA at the October 1998 informal meeting when we expressed the view that selective inspection is feasible and that there are two main possible approaches to implementation:

- (a) From the user government side: using a risk profiling approach. A variation of this concept has already been implemented in the Philippines whereby the Government has published a list of goods which are considered high risk and still require to be systematically inspected, namely (i) certain sensitive goods including second-hand goods, waste products, goods requiring laboratory analysis, etc.; (ii) high risk goods determined by Customs; and (iii) goods which are not adequately described in the importer's proforma import declaration.
- (b) From the country of supply side: the PSI company can carry out an audit of the exporter's premises, for those products exported on a regular basis, to establish a level of assurance on the products, systems and documents which would enable selective inspection techniques to be introduced. Provided the exporter satisfies certain published criteria his consignments would be eligible for selective inspection which would be carried out using a sampling methodology in line with international standards. IFIA believes that this approach would satisfy the PSI Agreement requirements in respect of non-discrimination and transparency.

Subject to the conclusions of the Working Party on this subject, IFIA would be prepared to recommend that its members explore with user governments the possibility of implementing selective inspection provided this meets with the user government's requirements.

Please be assured that IFIA is aware of the importance of trade facilitation and IFIA members will be seriously considering selective inspection and other system enhancements to support this objective.

Yours sincerely,

Nigel Balchin
IFIA PSI Working Group
PSI Committee
