

WORLD TRADE ORGANIZATION

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Working Party on Preshipment Inspection

REPORT OF THE WORKING PARTY ON PRESHIPMENT INSPECTION TO THE GENERAL COUNCIL

1. The Working Party on Preshipment Inspection was established by the General Council at its meeting of 7, 8, and 13 November 1996. The Working Party conducted the review under Article 6 of the WTO Agreement on Preshipment Inspection. Article 6 states that:

"At the end of the second year from the date of entry into force of the WTO Agreement and every three years thereafter, the Ministerial Conference shall review the provisions, implementation and operation of this Agreement, taking into account the objectives thereof and experience gained in its operation. As a result of such review, the Ministerial Conference may amend the provisions of the Agreement".

The terms of reference were as follows:

"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 in December 1997".

2. This report is organized in two sections: A. a summary of the work undertaken over the year; and, B. the Working Party's recommendations.

A. Summary of work

3. The Working Party held four formal meetings, on 28 February, 13 June, 24 September, and 1 December 1997. The minutes of the formal meetings are contained in G/PSI/WP/M/1, 2, 3, and 4 (to be issued).

4. Early in its deliberations, the Working Party agreed with the Chairman's proposal to review on the basis of a four-track process, the "provisions, implementation and operation of this Agreement, taking into account the objectives thereof". The four tracks were (a) the Chairman's informal consultations with Members; (b) submissions of national experiences with preshipment inspection (PSI) and with the Agreement on Preshipment Inspection; (c) a data-based Survey/Questionnaire; and (d) exchange of views on the identified Checklist of Issues.

(a) First Track: Chairman's informal consultations

5. The Working Party held eight informal meetings during 1997, on 14 May, 24 September, 13, 20, and 24 October, and 6, 18 and 26 November 1997. These consultations and informal meetings were used primarily to allow a free discussion in order for Members to inform and educate themselves on the issues identified and concerns expressed, and to establish the procedures for the review. The last five informal meetings focused on the preparation of the final report. The Chairman also met with delegations over the course of the year.

(b) Second Track: Submissions of national experiences

6. At its first meeting, the Working Party agreed that it would benefit from written submissions by Members on their experiences with preshipment inspection and with the Agreement. 37 countries use PSI services, of which 34 are WTO Members. Out of this number, six Members, Ghana, the Philippines, Peru, Colombia, the Côte d'Ivoire, and Kenya, submitted national experiences. These are contained in documents G/PSI/WP/W/3, 4, 5, 6, 10, and 14. The United States circulated a non-paper at the first meeting explaining its experiences with preshipment inspection and with the Agreement. Switzerland submitted a communication (G/PSI/WP/W/9) based on the different issues identified in the Chairman's Checklist of Issues (see paragraph 8 below). Question and answer sessions followed each presentation and provided an opportunity for Members to better familiarize themselves with various PSI programs, in principle and in practice. The question and answer sessions also allowed Members with specific grievances regarding certain programs and measures taken within the framework of PSI to request clarification and to consult bilaterally on these problem areas. Questions and answers were circulated in documents G/PSI/WP/W/7 and Rev.1, G/PSI/WP/W/12 and Corr.1, and G/PSI/WP/W/13.

(c) Third Track: Data-based Survey/Questionnaire

7. This track of work consisted of a Survey/Questionnaire containing 11 questions designed to garner uniform data and to provide an empirical factual basis for the Working Party's review. The results of the Survey/Questionnaire, compiled into a tabular format, provided an objective and factual body of information to the Working Party. They supplemented the limited number of national experiences submitted with a factual picture of the conduct of preshipment inspection activities and with additional elements on which to assess the effectiveness of the Agreement in regulating such activities.

(d) Fourth Track: Exchange of views on the Checklist of Issues

8. Based on the views expressed at the first meeting and informal consultations, the Chairman presented, on his own responsibility, a working document listing the identified issues, to provide a framework for discussions and to guide the review process. This was contained in document G/PSI/WP/W/2. The Checklist elaborated on 7 issues: price verification, confidentiality of business information, non-discriminatory application of inspection criteria, transparency, delays, on-site representation of PSI entities, and operation of the Independent Entity. During the discussions, Members agreed to add three additional issues, conflicts of interest, notifications, and technical assistance. At its third meeting, the Working Party agreed that these 10 issues would form the basis of its final report.

9. In the exchange of views by the Working Party on the issues of price verification, revenue collection targets, and the eradication of corruption, it was felt that the views of the international financial institutions, on these issues, would be useful. Consequently, their views were sought, and are summarized in the Annex to this document.

B. Recommendations

Having regard to Members' experiences with the PSI Agreement, the results of its Survey/Questionnaire, and analysis, the Working Party reached the following understandings in order to enhance implementation of the Agreement:

(a) Recommendations for immediate action

1. Price verification by PSI entities for customs purposes shall be limited to provision of technical advice to facilitate the determination of customs value by the user Member. In this regard, the ultimate

responsibility for customs valuation and revenue collection rests with user Members. All activities of PSI entities should be monitored by user Members who should be encouraged to reflect this in national legislation or administrative regulations.

In order to ensure compliance with the requirements of Articles 2.5 to 2.8 on transparency, Article 2.1 on non-discrimination and Article 2.20 on price verification, a user Member should require PSI entities to:

- (i) make publicly available a single set of price verification criteria; and
- (ii) inform exporters and importers of the applicable valuation methodology.

Price verification criteria should include the customs valuation methodology, as specified in user Members' national legislation or administrative regulations, used when providing technical advice on customs valuation. In this regard, user Members should encourage PSI entities to utilize electronic means for purposes of providing required information to exporters and importers.

User Members shall ensure that requests for information do not go beyond Articles 2.12 and 2.20 of the Agreement on Preshipment Inspection. Reciprocally, exporter Members should inform user Members when they become aware that PSI entities' requests for information go beyond these Articles.

In conformity with Article 2.21, a user Member shall ensure that the PSI entity, when responding to a dispute on price verification, provides a detailed written explanation within 10 days of receipt of the complaint, setting forth the basis of its opinion of value by reference to the specific applicable elements of the price verification criteria.

2. In accordance with Article 3.3, exporter members should ensure that their technical assistance activities are designed to address the specific needs of user Members in implementing the terms and objectives of the Agreement.

3. User Members should ensure that PSI entities are encouraged to establish local focal points in countries where they do not have physical, on-site representation. The establishment of websites by IFIA and by PSI entities with on-line services would enhance efficiency of PSI operations in such areas as procedures, methods, inspection criteria, responses to inquiries, and dissemination of other usable, essential information by importers and exporters. In addition to providing hard copies, PSI entities should be encouraged to communicate Clean Reports of Findings (CRFs) to importers and exporters through electronic means.

4. All Members shall notify their laws and regulations, in accordance with Article 5 of the Agreement, as well as any changes thereto. In submitting these notifications, Members should endeavour to provide additional descriptive information on how they are implementing the Agreement.

5. In furtherance of Articles 2.9-2.13, user Members shall ensure that contracts with PSI entities or national implementing legislation or administrative regulations specify procedures to be undertaken by such entities to limit the confidential business information they seek from exporters to that provided for under the Agreement and to ensure that any such information obtained by PSI entities is not used for any other purpose than PSI activities for the user Members, as defined in Article 1.3. Any breach of the rule of confidentiality by the PSI entity is an action that may be brought against the PSI entity in the appropriate judicial or administrative forum of the user Member.

6. User Members shall ensure that contracts with PSI entities or national implementing legislation or administrative regulations provide for fee structures that do not create incentives for potential conflicts of interest in any way that may be inconsistent with the objectives of the Agreement. Additionally, contracts with PSI entities or national implementing legislation or administrative regulations shall specify that PSI entities should not inspect transactions involving products in which a PSI entity or its related company may have a commercial interest.

7. User Members shall ensure that PSI entities issue CRFs to importers and exporters immediately on receipt of the final documents and completion of inspection. As foreseen in Article 2.16, in no case must the issuance of a CRF exceed 5 working days after an inspection. In the event that a CRF has not been issued, the user Member shall ensure that the PSI entity issues a detailed written explanation specifying the reasons for non-issuance.

(b) Recommendations for future action

8. The life of the Working Party shall be extended for one year to exchange views on a Code of Conduct/Practice for PSI entities; a standard inspection format; selective examination of shipments; auditing of PSI entities; the promotion of competition among PSI entities; fee structures for PSI entities; and the use, to user Members, of building price data bases.

9. An assessment of technical assistance activities should be undertaken, in accordance with Article 3 of the Agreement, and draw upon the assessment of technical assistance activities under consideration in the Committee on Customs Valuation and the integrated framework for trade-related technical assistance endorsed by the WTO High-Level Meeting for Least Developed Countries. Technical assistance activities, which should be administered on a request basis, could include areas such as tariff and customs administration reforms; simplification and modernization of systems and procedures; and the development of an adequate legal, administrative, and physical infrastructure.

ANNEX

Views of International Financial Institutions

(a) The World Bank

The World Bank confirmed that it has no Bank-wide policies dealing with the use of PSI to address under or over invoicing of trade transactions. Nevertheless, the World Bank has included conditions regarding the use or administration of PSI in the terms of its loans to a wide range of countries, including structural adjustment loans in the 1990s to Kenya, Togo, Côte d'Ivoire, Sierra Leone, Benin, Malawi, Mauritania, Jordan and Mozambique. The World Bank noted that the primary focus of its staff is on the implications of the trade regime for economic efficiency, rather than on revenue-raising objectives. Typically, this leads Bank staff to recommend low and uniform tariffs and elimination of non-tariff barriers, and Bank support for PSI would be as a means to achieve such a trade regime.

(b) The International Monetary Fund

The IMF confirmed that while it assesses and evaluates customs revenues and compares amounts collected to establish targets, it does not generally require the use of PSI entities to enforce such targets. The IMF also noted that the use of PSI services is not always or universally advisable and that it should be considered only on a case-by-case basis. In countries where customs revenue performance is weak and/or corruption in customs administration is thought to be a major problem, Fund staff have found the use of PSI services to be a positive element in customs rehabilitation. However, the IMF emphasized that engagement of PSI services has not always eliminated corruption. The use of PSI may be appropriate if local administrative capacity in customs is exceptionally weak, if the PSI program points to tangible and measurable revenue improvements, if arrangements are clearly specified for the transfer of skills and technology, and if the costs are reasonable. The IMF further expressed the view that, in all cases, programmed withdrawal of PSI services should be undertaken as the national customs offices demonstrate a capacity for implementing reforms.