

Boksburg Group

The Boksburg Group's Live Discussion Paper

An Approach for a Trade Facilitation Agreement in the World Trade Organisation

(Covering Boksburg Group views 2003-2006)

Background

On the 28th October 2005 the Chairman of the Negotiating Group on Trade Facilitation, Ambassador Muhamad Noor Yacob issued a draft Hong Kong Report which sets the scene for negotiations that took place at the WTO Ministerial Meeting in Hong Kong. This paper is a concise review of the Negotiating Groups work and sets out recommendations related to the future negotiations.

The negotiations will be primarily aimed at clarifying and improving GATT Articles V, VIII and X based on proposals received from Member Countries. Most of the recommendations made in the following Boksburg Paper will be addressed in the negotiations. Issues such as the process of identifying individual Member's trade facilitation needs and priorities, and the cost implications of possible measures will continue to be addressed and intensified with International organizations continuing to assist WTO Members in this process and in support of the negotiations.

To allow developing countries and LDCs to participate effectively in the negotiations it is recognised that it is vitally important technical assistance and capacity building be made available. Technical assistance and capacity building will also be required to implement the results of the negotiations and reflects the trade facilitation needs and priorities of developing countries and LDCs. There is a recommendation that Members, in particular developed ones and international organisations, continue to intensify their support in a comprehensive manner and on a long-term and sustainable basis, backed by secure funding.

It is also recommended that negotiations on the issue of special and differential treatment, with a view to arriving at provisions that are precise, effective and operational and that allow for necessary flexibility in implementing the results of the negotiations.

Aim of the Boksburg Living Paper

To identify what developing countries might include in a WTO trade facilitation agreement.

Aims of the Boksburg Group Roundtable Meetings

To build on previous Boksburg Group discussions and:-

- to share perspectives and understanding on trade facilitation especially with first time participants.
- to consider the progress being made by the WTO Negotiating Committee on Trade Facilitation.
- to address in detail the Boksburg views on Articles V, VIII and X of the GATT and to make recommendations for changes related to a trade facilitation agreement;
- to consider what the Boksburg Group believe that a trade facilitation agreement might look like and what it might include;
- to consider the next steps and keep at least six months ahead of developments in the negotiations.

Boksburg Conclusions

At the eight meetings of the Group there has been a convergence of views on:

- the real benefit of trade facilitation;
- an agreement being linked to adequate technical assistance and support for capacity building;
- the concerns related to the enforcement and dispute settlement process; and
- the opportunity to influence the content of an agreement.
- All countries recognise that now that negotiations on a rules based WTO Agreement are underway it is vital for developing countries to influence the process to ensure that the final shape of the agreement maximises the benefits it offers and makes allowance for a countries capability to implement the agreement.
- An agreement should be more extensive than articles V, VIII and X.

- There is a need to encourage integrated border management. This could best be achieved by giving Customs the leading role and ensuring close co-ordination between all agencies represented at borders. All border control regimes should be included in this integrated border management process.
- There are still some misgivings and misconceptions related to a WTO Trade Facilitation Agreement;
 - That it will prevent customs authorities carrying out their functions.
 - That it would restrict Revenue Authorities levying of taxes.
 - That trade facilitation deals only with imports and not exports.
- Capacity building and technical support must be an integral part of any agreement. The WTO should own the capacity building process to underpin the political links between commitment – capacity building – credibility and sustainability of the trade facilitation agreement. Coordination of capacity building and technical support being offered to WTO Member Countries by major donors must be an integral part of an agreement.
- The relationship between the major donors/ specialist international organisations, especially the WCO and WB needs to be defined and roles related to a WTO Agreement defined.
- In some instances the state of the infrastructural development of a country will completely neutralise the benefits of a trade facilitation agreement. Whilst it should be recognised that the WTO agreement cannot be used as a precedent for wholesale infrastructural improvement there should be a best endeavour clause in the agreement that ensures that capacity building donors take into account the state of infrastructural development and transport needs when funding the implementation of an agreement.
- There must be a link between the dispute settlement process and the ability of a country to implement and comply with aspects of any agreement.
- Information sharing should be a key part of any agreement and this will enable emerging economies to undertake more meaningful risk assessment.
- It was felt that national trade facilitation agencies would be helpful in the development of efficient border management.

A Possible Structure for a Trade Facilitation Agreement

The Group's thinking embraces improvements in border management, covering not only traditional customs activities but the wider range of border issues that the modern trading environment raises, which includes security concerns and others that create unacceptable restrictions for developing economies and their citizens. It is on this basis that a more detailed review of GATT articles V, VIII and X will bear fruit. Mere technical adaptation of these articles will not be enough to produce the radical improvements that landlocked countries seek, or that outdated border management infrastructures and non-transparent administrative practices require. Only the broader approach advocated here will unlock the full benefits of a trade facilitation agreement.

A WTO trade facilitation agreement could be based on the following key principles:

- financial and technical support to help countries achieve their trade facilitation goals;
- need for sufficient substance to create a measurable improvement to trade facilitation;
- need to measure and stimulate progressive improvement in the facilitation of trade and the adoption of higher standards;
- need to offer emerging economies the economic benefits of trade facilitation, without necessarily requiring them immediately to achieve the same degree of trade facilitation in all its aspects as the developed economies; and
- application must be subject to objective assessment, enforcement and policy review, adapted as necessary to take account of the specific nature of a trade facilitation agreement.
- An agreement should feature special and differential treatment, to allow emerging economies to implement progressively a comprehensive package of trade facilitation measures, within a flexible framework, at a pace that they can accommodate. In an ideal agreement emerging economies would define their own program of improved border management within a framework of WTO rules, stimulated and supported by the WTO. This could be achieved by building on the notion of a 'trade facilitation ladder', that would define levels of facilitation to which countries would commit themselves. All

WTO members would be required to sign-up to the lowest level of standards, with those countries that are most able, implementing a far higher level of facilitation. The number of steps in the ladder and their content should be defined by the negotiators.

The compulsory standards could be drawn from the World Customs Organisation's revised Kyoto Convention and the non-customs aspects from the UN Recommendations or any other appropriate source. This paper suggests some provisions that all WTO members could sign-up to, but the list is illustrative, and not exhaustive. Some provisions would find their place in articles V, VIII or X of the GATT, while others would be located within the trade facilitation agreement itself. This paper starts to address the provisions in these specific categories but takes the view that an agreement to not be built on old and dated foundations. Whilst the best aspects of earlier provisions should be recognised and built upon an approach should be taken to ensure the ultimate development of a comprehensive and coherent trade facilitation agreement.

WTO members would self-assess their position on the facilitation ladder, by considering the degree of facilitation that their regime offers related to the facilitation levels in the agreement. However, all members would be required to meet the conditions of at least the lowest level. The core provisions implicit in acceptance of the lowest level would deliver an immediate improvement in trade facilitation worldwide, and assessment and review mechanisms would encourage WTO members to move progressively up the facilitation ladder.

Binding Rules

The WTO agreement should be based on binding rules. The agreement should be a rules-based agreement where core rules should have a binding impact on contracting parties. The binding nature of such rules should be determined by the capability of contracting parties. Core rules should be applicable to all. Depending on the capability of the developing country there should be a phased introduction of binding rules.

Measurement of Trade Facilitation

A measurement of facilitation should be achieved using release times for imported/exported goods. The initial process could be based on a national time-release measurement, which each member country would establish for itself by measuring the time that it takes from the receipt of an entry into the port to the issuance of a release order. This measurement should target the top

5 categories of imports and exports. The measurement should be both transparent and reproducible. Countries should commit to a quantified improvement program. A process of regular assessment would enable each member and the WTO to trace their progress in delivering trade facilitation. This process aims to achieve improvement on a national basis; it would not be used to compare performance between countries.

The World Bank and WCOs assessment tools especially the time-release measurement recommendations should be used as the basis for establishing trade facilitation performance and capacity building needs of individual countries.

In the longer term, members should be encouraged to develop more comprehensive measures of facilitation, which could ultimately be considered as an international standard. Objective measurement of the impact of trade facilitation should be a key ingredient in establishing its practical value and encouraging members to increase their level of commitment.

Dispute Settlement

Dispute settlement is a key feature of a WTO agreement to preserve the credibility and enforceability of such an agreement. Due to the particular nature of trade facilitation, the standard dispute settlement process is not appropriate. The standard dispute settlement process is already a feature of the current agreement covering articles V, VIII, X and other provisions. The future operation of a dispute settlement mechanism must be addressed in detail so that it does not undermine its purpose but ensures that there is a transition time for implementation and that every possible mediation step is taken before the imposition of the final dispute settlement process.

A provision must be adopted to avoid the recourse to dispute settlement in cases where a country is unable to comply with a WTO commitment due to capacity limitation. The principle of making commitments according to members' capacity should be adopted and countries given the responsibility for adhering to /ensuring standards according to their capacity. This classification/gradation should be built into the main body of the text. There should also be a commitment to observance of basic standards (core commitment) which most countries can implement, and it could be left to the members, as under GATS, to indicate through Annexes the range and extent of their commitment related to no-core aspects of the agreement.

One suggestion could be to exempt LDCs and countries with a volume of trade below an indicated level (or there could be more than one gradation); they may be exempt for a specified period of years from making any commitments.

Avenues for appeal and judicial review in the member country must be exhausted before the complaining member can approach the Dispute Settlement Mechanism (DSM). A Trade Facilitation Committee will then try and resolve the dispute through discussions amongst the parties. Any dispute involving an emerging economy should be preceded by a mediation process to assess if the problem is linked to capacity constraints, and if so alternative courses of action would be taken before recourse to dispute settlement.

This process is already in the DSM and would be made more effective by the power of arbitration. In case of failure to settle the dispute, the matter may be sent to a panel. In case of disputes involving a developed and a developing country, the hearing may take place in the developing country and one of the panel members may be from a developing country. The commitment of technical assistance should be of a positive or binding nature and commitments linked to receipt of such support. A mechanism should be adopted by the committee to ensure that such support is forthcoming

Capacity Building

Capacity building is the “glue” that sticks the commitment to a WTO Agreement to its implementation.

The Doha development agenda firmly links progress in new agreements to substantial support for those countries that do not have the capability or infrastructure to implement such agreements. It is crucial that funds and technical assistance are readily available to those emerging economies in need of support. The commitment to make funds available should be binding.

Up until now the process of capacity building has sometimes lacked coordination reducing the effectiveness of the assistance provided to the recipient countries. In future support must form part of a consistent and coordinated approach that will ensure sustainable improvement. Measurement of the degree of facilitation both before and after the support has been given will help maintain progress. Tools available from the World Bank and the WCO are now available to assist this process.

Capacity building should be directed at a range of areas including: technology transfer; infrastructure; human resource development; knowledge transfer; public education; finance; and training. There should be clear criteria on eligibility, assessment and measurement of progress. An important part of the process should be notification.

A range of international institutions should provide capacity building assistance for example, the WTO on legal aspects; WCO on customs reform; and in other areas the World Bank, UNCTAD and other institutions.

Funding should be provided by donor agencies, and other funding measures could be considered including by directing national funds to capacity building and private sector participation in funding. There was also a need for a national focal point to coordinate capacity building support.

The state of the infrastructural development of a country is important to the performance of a TF agreement. In instances where lack of adequate infra structure will completely neutralise the benefits of a trade facilitation agreement, donors should take into account the state of infrastructural development and transport needs and address these, not as a WTO measure, but by use of appropriate funding address the practical constraints to the effective implementation of TF agreement.

Possible elements and recommendations for inclusion in a Trade Facilitation Agreement.

Transparency (GATT Article X)

Possible core elements

1. Border agencies should publicly make available their laws, procedures and other rules affecting import/export, together with related information. (This is an existing commitment)
2. All charges should be made public in good time, and should not exceed the cost of the services rendered. NC
3. Border agencies that intervene in international trade should designate offices or other locations where goods can be produced for clearance or similar formalities. NC
4. Goods in transit should also be subject to the provisions 1, 2, and 3. NC
5. Liability to duties, taxes and similar levies, as well as the factors and conditions relating to assessment of duties and taxes, should be publicly available to determine the rates. EC
6. National legislation should specify the party/parties primarily responsible for the payment of duties and taxes. NC
7. Provision should be made to mandate the cooperation and data exchange between customs administrations covering the area of TF, for example details of export including export values. This would require the implementation of an effective cooperation process. NC
8. Data on transit consignments should be shared between appropriate customs administrations. NC
9. Export data should be used as the basis for the import data. NC
10. Provisions should be strengthened related to customs compliance as mandated by Annex D, para 1. NC

Recommendations for Best Practice

1. ***Border agencies should establish consultative arrangements with trade representatives. This should ensure that new legislation is practical, and compliance is increased.***

2. *There should be an integrated approach to border management with the establishment of a lead agency at the border coordinating and controlling all cross border transactions.*

NC

Appeal (Article X)

Possible core elements

In matters arising from the activities of border agencies, there should be a timely right of appeal to an agency independent of the border agency. On request the agency concerned should explain in a timely manner, the reasons for their action. The appellant should have the right of appeal. EC

Border Management (Article VIII)

Possible core elements

1. Border agencies should limit their controls and other activities to those necessary to ensure compliance with the relevant regulations. EC
2. Border agencies should clear declared goods as soon as it is practicable (for example: goods examined, documents checked and duties and taxes paid or secured). EC
3. A method for measuring the release time of goods should be established and published. Border agencies should progressively reduce the time required for release. NC
4. In the event of an error in assessment, border agencies should repay any excess sums levied within a reasonable period of time. NC
5. Border agencies should only impose penalties that are fair and commensurate with the infraction of law. EC
6. Risk management should be developed and used as a means of improving the efficiency of clearance and movement of goods as well as detection of fraud, smuggling or security infringements. This could include post clearance audit as well. NC
7. A single administrative document and universal data set to be used by all border agencies should be introduced to improve the management of trade data between countries. NC

It should be noted that a significant number of the core commitments covered under GATT Article X (Transparency are also appropriate to this provision)

Recommendations for best practice.

1. Border agencies should be committed to the introduction of simplified procedures e.g. risk management and fast track procedures for traders with a record of compliance. NC
2. Various border agencies that deal with the clearance of goods should demonstrate a coordinated approach to border clearance and inspections. NC
3. Traders with a good level of compliance should be authorised/ accredited to use simplified procedures. NC
4. Border agencies should clear the goods of an authorised person at approved premises. NC
5. A standard approach to supply chain management. (to be discussed further)
6. Where border agencies use information technology they should conform to internationally accepted standards where possible .NC
7. When modernising their trade procedures, for example use of electronic data interchange (EDI), border agencies should consult with all those involved in the transaction. NC
8. The paper format of the principal forms used to move goods in international trade should conform to the UN layout-key. The format for electronic equivalents should be based on internationally agreed standards. NC

Transit (Article V)

Possible core elements

1. Documentary and data requirements for transit procedures should be simplified by using existing international agreements where applicable. NC
2. States should recognise the existence of goods in transit and should create appropriate regimes if not already in existence. EC
3. Regimes should be as simple as possible, consistent with good control. NC
4. Guarantees should be dispensed with where possible, or kept to the lowest level consistent with good control. For high-risk goods, additional measures could be taken. NC

5. Transit regimes should operate without discrimination between countries. EC
6. For better tracking of the movement of goods in transit, information technology should be used. Regional cooperative arrangements would be desirable. NC
7. Countries be encouraged to form regional transit arrangements to address transit related problems like axle load of vehicles, these are problems. NC

Development

Possible core elements

1. The introduction of new regulations and procedures for border management should take into account interests of developing and least developed countries and small and vulnerable economies and allow adequate lead-time for adjustment.
2. There should be realistic and individualised transitional periods for the implementation of commitments, particularly any that have significant resource implications at the start.
3. Provision should be included to prevent the implementation of a dispute settlement where non-compliance is due to an emerging economy's lack of capability.
4. For better tracking of the movement of goods in transit, information technology should be used. Regional cooperative arrangements would be desirable.
5. The introduction of modern border procedures (authorised traders, seamless integrated transaction etc) should not discriminate against developing country traders or SMEs.

Recommendations for best practice

The quality, quantity and coordination of technical assistance and development aid for trade facilitation should be improved. A framework should be set-up to coordinate all major donors, international agencies and recipients, and the private sector.

Fiscal Regimes (Article VIII)

Possible Core Elements.

The amount of any fiscal security required should be as low as possible, and not more than the duty involved. This should be discharged as soon as the border agency is satisfied that the obligation has been fulfilled. NC

Recommendations for best practice

1. When national legislation so provides, border agencies should not require fiscal security (bonds, cash deposits, bank guarantees, etc) when they are satisfied that an obligation will be fulfilled.
2. National legislation should provide a range of procedures giving relief from duties, taxes and similar levies, subject to compliance with official requirements.

Miscellaneous

Recommendations for best practice

Consideration should be given to establishing public funded national organisations that focus solely on simplifying international trade.