

**ENHANCING THE AFRICA'S PARTICIPATION IN THE WTO
NEGOTIATIONS,
Expert Meeting
NAIROBI, 7-8 SEPTEMBER 09
ORGANIZED BY UNECA**

WTO Negotiations on Trade Facilitation

Presentation by Edouard BIZUMUREMYI

Commercial Attaché in Permanent Mission of Rwanda in Geneva

Focal Point of the African Group on Trade Facilitation

I. General Introduction

I.1. Definition: what is Trade Facilitation?

There is not a standard definition of trade facilitation. Through the literature and positions of WTO Members, it appears that there are two kinds of approaches on this issue. First, for some Members, organizations, individuals, Trade Facilitation is being understood as measures and policies intended to simplification, harmonization and standardization of customs and other border procedures with a view of minimizing cost and time and enhancing predictability of international trade of goods. For others particularly from the developing world, Africa included, Trade Facilitation is a broader concept going beyond procedures and formalities related to cross-border trade of goods to also cover other domestic trade-related constraints. In this context, trade facilitation is understood to be covering both trade procedures and formalities as well as infrastructure development including ports, railways and roads.

The scope of the on-going WTO negotiations on trade facilitation is limited to the review of the GATT 1994 Art. V, VIII; and X. This means that trade facilitation in the WTO context is closer to the smaller definition of trade facilitation and is understood as the simplification of procedure, formalities, and documents related to importation and exportation and transit.

I.2. Historical background: When, how and why this issue was brought in the WTO?

Trade Facilitation was first introduced in the WTO work program during the first Ministerial Conference which took place in Singapore in 1996. The mandate of the Ministerial Declaration reflected a low level of ambition: “WTO Goods Council to initiate analysis and examination of four subjects: (i) trade facilitation; (ii) trade and investment; (iii) trade and competition; and (iv) transparency in government procurement. These four issues were later named as “Singapore issues”.

During the 4th WTO Ministerial Conference which took place in Doha, Qatar, in 2001, the level of ambition increased. Proponents of the so-called Singapore issues, particularly the EU, wanted an ambitious outcome but developing countries in particular India argued that the analysis and examination of these issues by the Goods Council is not yet completed and should continue. A compromise was reached by specifying that a decision to commence negotiations will be reached after the 5th ministerial Conference by “explicit consensus”.

During the 5th WTO Ministerial Conference which took place in Cancun in September 2003, most of developed countries (not all) strongly insisted for a clear outcome on Singapore issues while failing to deliver on development related issues such as among others (i) fair trade rules (elimination of all forms of trade distorting subsidies) and (ii) effective market access for products originating from poor countries. An unanticipated response came from the developing world. A coalition of one hundred and ten countries (G110) led by Brazil and comprising the African Group, ACP Group, the LDC Group, the G20 and the G33 strongly rejected the Singapore issues as well as any outcome on Agriculture, NAMA and Services which doesn't fulfill development objectives of the Doha Development round. That was the failure of the Cancun Ministerial Conference. And that was the beginning of the real strength of developing countries (particularly Brazil, India, China, South Africa and other African Countries) in the WTO multilateral negotiations.

During the mini-ministerial meeting which took place in Geneva, July 2004, progress was made on the entire Doha development Agenda and reached a wide consensus which included Trade Facilitation. The WTO General Council Decision which was taken on 1st August (the so-called “July Package”), concluding an intensive two-week negotiations, sets the scope for trade facilitation negotiations.

As we shall see below, developing countries made this compromise based on the understanding that developed countries will ensure the provision for technical and financial assistance to implement trade facilitation measures including infrastructure development related to movement of goods (although modalities are not clear enough on this issue of infrastructure as we shall see below). Also, another condition to commence negotiations on trade facilitation was to completely drop from the Doha Work Programme negotiations/discussions on the other three Singapore issues. This appears to be a fair compromise given the importance of trade facilitation for all at one side and the assurance of technical and financial support at the other side.

I.3. Why were developing countries so reluctant in the past to adopt Trade Facilitation as part of the Doha Development Round?

Whilst it is widely agreed that Trade Facilitation can contribute to boost national, regional and international trade through the reduction of unnecessary barriers and delays of movement of goods across borders, it is also recognized that some operational procedures used by customs administrations as well as trade related policies in the advanced and newly industrialized economies are costly and require heavy investment in technology and skilled human resources. This explains for example why African countries have so far been reluctant to join the “International Convention on Simplification and Harmonization of Customs Procedures” also known as the “Revised Kyoto Convention” (revised in 1999). But as we shall see in the section regarding divergences among WTO Members in the current Trade Facilitation negotiations, these are not the only obstacles facing developing countries. There are also differences on the role and objectives of the Customs. While advanced and newly industrialized economies provide mandate to their Customs Administrations to put their focus on facilitating trade, in many developing countries the major emphasis is put on efficient customs revenue collection in an environment where importers tend to undervalue their imported goods (which is not the case in developed countries for many reasons including the low level of customs duties).

This said, it is important to underline two emerging policy issues in the developing world and their positive impact on prospects for the implementation of reforms aiming at trade facilitation and developing countries' willingness to undertake commitments aiming at trade facilitation. First, there is a growing recognition and strong support from the high level policy makers in developing world including Africa for reducing delays in the movement of goods including goods in transit by the removal of trade barriers including NTBs with a view of minimizing costs of doing business and also for its contribution to further strengthening regional integration. Second, the lack of strong interest and expertise to embrace information technology tools and techniques which was prevailing in last decade is currently outdated. Indeed, many developing countries including African countries see ICT as a means to achieving development objectives and have been mainstreaming ICT in all sectors as a cross-cutting issue including through e-government (although it may be at a nascent stage in many countries). Hence, the use of information technology in public agencies, e.g. customs is no

longer an obstacle but should be seen as a further step towards integration in the global economy.

After this long general introduction touching on the definition, the historical background and reasons for reluctance by developing countries to adopt trade facilitation rules under the WTO negotiating agenda as well as the new development including the growing ICT use in developing countries, the discussions below will bring more clarity on the issue under consideration. Section two will address the mandate as outlined in the Annex D of the so-called “July Package” and section three will discuss the major trade facilitation measures being proposed under the current negotiations while highlighting differences among Members.

II. Mandate, scope and flexibilities

Mandate and Scope

The modalities contained in the Annex D of the so-called “July Package” clarify the scope and objectives of negotiations as follows: *“Negotiations shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit. Negotiations shall also aim at enhancing technical assistance and support for capacity building in this area. The negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues”* (Para 1 of modalities)

Special and Differential Treatment (S&D)

Paragraph 2 of modalities recognizes the need for the negotiations to take into account the principle of special and differential treatment for developing countries and least-developed countries and that this principle should go beyond the granting of traditional periods for implementing commitments. In other words, *“the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed countries”* (para 2 of modalities) and should not be related to the fixed negotiated deadline as it was the case in the previous agreements. Paragraph 2 also reaffirms that developing countries and LDCs will *“not be obliged to undertake investments in infrastructure projects beyond their means”*.

Paragraph 3 recognizes the special consideration to be accorded to possible difficulties that may arise during the implementation of the outcome in the LDCs as follows: *“Least-developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities”*.

Technical Assistance provision by developed countries

Paragraph 5 recognizes the importance for the provision of technical assistance during the negotiations in order for customs officials/trade officers from developing world in particular from Africa and LDCs to take part in the negotiations in Geneva. This has been relatively well done so far. Another useful type of assistance already provided is to conduct the needs self-assessment based on the proposed measures. Many African countries have been covered and found the exercise very helpful in understanding the level of compliance/non-compliance with

proposed measures. The same exercise will be needed when negotiations will be concluded in order to separate agreed measures into different categories (see page 5 below).

The important provision for technical assistance comes under paragraph 6 of the modalities. It is related to the provision of the assistance during the implementation period of the outcome of the negotiations: *“Support and assistance should also be provided to help developing and least-developed countries implement the commitments resulting from the negotiations, in accordance with their nature and scope”*. This assistance is not limited to some new innovative techniques but can also cover infrastructure development: *“In this context, it is recognized that negotiations could lead to certain commitments whose implementation would require support for infrastructure development on the part of some Members. In these limited cases, developed-country Members will make every effort to ensure support and assistance directly related to the nature and scope of the commitments in order to allow implementation”*. This commitment is however in a best-endeavour language (*“will make every effort”*) and doesn’t provide any guarantee for such assistance. It is further diluted in the following language by weakening the obligation: *“It is understood, however, that in cases where required support and assistance for such infrastructure is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required”*. The dilution of assistance where infrastructure development is needed is further emphasized as follows: *“While every effort will be made to ensure the necessary support and assistance, it is understood that the commitments by developed countries to provide such support are not open-ended”*.

This section highlighted both the scope and objectives of negotiations which is to clarify and improve the existing GATT Art V (freedom of Transit); Art III (Fees and charges connected with importation and exportation); and X (publication of trade regulations). It also presented the general principles with regard to flexibilities to be enjoyed by weak economies as well as assistance to be provided by developed countries. As we shall see below, proposals on the table contains some measures whose implementation will take long time due to their complexities and technicalities as well as their nature as new policies for some countries requiring changes in law-making. The African Group therefore has been proposing a kind appropriate approach with regard to the implementation process. This approach is outlined below and tends to categorize in three groups the disciplines contained in the possible future agreement on trade facilitation.

Proposal for Flexibilities (S&D) and capacity building in the implementation process

Negotiations have relatively advanced on the issue of special and differential treatment and capacity building under the leadership of the “friend of the chair” (Mr. Mathieu Wilson, the distinguished representative of Barbados).

The African Group, the ACP and the LDC Group have been working together as a like-minded group on various issues including on the categorization of the future agreed measures to be adopted at the end of the negotiations. Positions are similar with minor nuances. But all positions seek to ensure full flexibility as provided for in the modalities.

The African Group has been proposing the following categorization and approach:

- (i) *Category A*: Measures falling under Category A would include measures that our countries can implement from the date of entry into force of the agreement. These

are measures that are currently being implemented at country level. For example publication of trade regulations which is currently done through the national gazette. These measures are expected to be determined by individual countries. This means that measures falling under Category A will differ from country to country. This set of measures is expected to constitute the main schedule of commitments by our countries. This schedule shall be submitted to the WTO at the entry into force of the agreement, the period ranging from 12 to 18 months after the conclusion of the round. The schedule will form integral part of the agreement and will be therefore binding. This proposal is agreed by majority of Members with some notable exceptions. However, even some developed countries that support this proposal, they would like to ensure that each country will faithfully submit all measures currently in use in their customs and trade procedures. Hence they are proposing a *standstill clause*. We still not have a consensus on this. One Member is still insisting to submit the schedule of commitment (composed of Category A measures) at the signature time.

- (ii) *Category B*: Measures falling under Category B would include all measures which will require some time before their implementation for possible changes and adjustment in domestic regulation but without any need for technical/financial support. We are proposing that these measures would be submitted one year after the entry into force of the agreement.
- (iii) *Category C*: Measures falling under this category are composed of complex measures requiring both time and technical/financial support. These measures such as the establishment of the Customs Single Window, the application of Risk Assessment and Management would require project elaboration in order to determine the timeframe and the implementation costs for their full implementation. This can only be done if there is there is assistance to elaborate the project plan. The African Group is therefore proposing that no time frame should be set for the submission of such measures since any undertaking will depend on external resources. Our proposal is the following: developing countries will notify the WTO with these measures only after having received assistance to elaborate their implementation plans/capacity building plans. The notification will be done to the Trade Facilitation Committee and will contain the name of the measure, the timeframe for implementation, the implementing entity and the donor, among others.

Other flexibilities under discussion in the NGTF and which are strongly supported by the African Group as proponent are the following:

- Early warning mechanism: A Member shall notify to the future Trade Facilitation Committee requesting additional time for the implementation of a measure under Category B or C or for shifting a measure from Category B to C. The African group is proposing that this flexibility should be automatic. Others are arguing that this open-ended flexibility would not give any predictability to economic operators.
- Peace clause: No Member shall invoke any dispute settlement procedures against a developing country Member (LDC included) for any measure under Category A for a period of “X” time (to be determined). This also apply to measures under category b and C.
-

III. Proposals under consideration in the Negotiating Group on Trade Facilitation

III.1. Background

The Negotiating Group on Trade Facilitation (NGTF) has advanced well since 2004 on the basis of implicit consensus – but consensus is still to be reached on a number of proposals on the table as well as on the process. In order to progress in the negotiations different approaches have been adopted and are currently used at the same time: there are on the one hand formal meetings of the NGTF, informal meetings of the NGTF, during which most of the discussion amongst members on the proposals take place. Then there are special processes, such as the friends-of-the chair processes, where the members meet without the chair of the negotiating group to discuss the SD&T and Technical Assistance issues with the announced objective of reaching consensus and proposing a joint draft text. Then there are informal meetings particularly among developed and newly advanced economies, and, a new working approach was tried, the so-called drafting mode.

Proposals in the NGTF have gone through different phases. Following the adoption of modalities in 2004, Members in particular developed and newly advanced economies submitted a number of proposals known as “*first generation*” proposal. This exercise was to put forward concepts, standards, and practices used in their context and perceived as useful for incorporation into a future agreement. This was later followed by the *second generation* proposal which was a consolidation of the ideas and concepts put forward in the first generation proposals. The draft legal language appeared in the *third generation* proposals late 2005 and particularly after the Hong Kong ministerial Conference. Since then the NGTF is refining the legal language of these proposals.

The work on the proposals’ text is currently very complex. As it was at the outset decided to have a bottom-up approach and to work on the basis of members proposals only, the NGTF is currently still far from having a coherent and precise draft text, or several alternative draft texts. The basis of the negotiations has for a long time been the various member proposals as submitted by individual members or a group of members. These proposals have by now all undergone different revision by its sponsors (see above) and a compilation of them is produced and regularly updated. In order to progress towards a draft text, members have then decided last year to work on so-called working sheets, which also reflect the text of the proposals but with the additional inclusion of the comments and textual counter-proposals made by members in the informal meetings of the NGTF. But currently both approaches seem to co-exist. During the last meeting of the NGTF in June 2009, an attempt was made to get into an intensive drafting mode on the basis of the working sheets, to see whether a consensus on a legal language could be achieved. The experience was deemed to be useless. No agreement could be achieved. To such extent that one major trading partner informed us, in an informal meeting, of the intention to go back to square one and to compile only the third generation proposals in their initial draft without the proposed amendments. Some Members see this as a negation of the work done for many years.

In my presentation below, I don’t intend to cover each and every issue under discussion. It would be difficult to discuss the state of play for all proposed measures. The reason is that there is disagreement on various issues. More generally, one could say that convergence is more growing on Article X (publication and administration of trade regulations). One possible explanation would be that the proposals relating to Art X are not adding too many new elements to the existing GATT 1994 commitments. The real new issue is the mandatory use of internet as a means of publication, the enquiry point, and advance ruling. Proposals to clarify GATT 1994 Article V (Freedom of transit) also attract a relatively high level of

consensus with notable exceptions, while proposals to clarify GATT 1994 Article VIII (Fees and charges connected with importation and exportation) are still controversial due to new measures for many developing countries particularly African countries. These are measures that are currently in use in the advanced and newly industrialized economies such pre-arrival processing; risk assessment and management, authorised traders, post-clearance audit; separation of release of goods from final determination of payment of customs duties/taxes/fees etc.) with a relatively high level of standards. Applying proposed standards (I focus on proposed standards because some of the procedures also apply in Africa) by developing countries can be very difficult, in particularly in countries where the customs revenue constitutes a big share of governments' revenue collection, and in a business context characterized by a big informal sector, low usage of ICT in companies, generalise compliance issues.

III.2. Analysis of the current proposed TF measures

From the African perspective, the proposals submitted for clarification of GATT Art. V, VIII and X can be divided into two groupings. The first group could constitute proposed measures which will imply changes in our trade policies, regulations, practices and procedures. The second group could be composed of measures which are technical in nature and seek to raise the standards of customs procedures towards harmonization with customs procedures applied in advanced and newly industrialized economies.

III.2.1. Proposals implying changes in trade policies, regulations and procedures

III.2.1.a. Proposals for clarification of GATT Article X: Publication of trade regulations

It is being proposed that: *“Members shall publish promptly all laws, regulations, judicial decisions and administrative rulings of general application relating to or affecting trade in goods in such manner provided for in Article X of GATT 1994 as to enable governments and traders to become acquainted with them”*.

Specific areas proposed to be covered by the publication obligations are the following:

- Publication of procedures of border agencies (including ports, airport, and other entry point procedures and relevant forms of documents);
- Publication of rates and taxes, fees and charges on or in connection with importation and exportation
- Publication of penalty provision against breaches of import and export formalities
- Publication of appeal procedures;
- Publication of average clearance and release time;
- Internet publication;
- Interval between publication and entry into force;
- The right of interested parties to comment on the proposed new regulations or amendments;
- Establishment of enquiry points

This proposal intends to reaffirm GATT Art X. It is the most advanced in terms of attracting a growing consensus among negotiators. The reason being that publication of trade regulations is already implemented by almost all countries as said above. The difficulties may arise through internet publication or the establishment of inquiry points

but this doesn't create a treat if adequate technical assistance is promised/will be provided. Another new area that can prove to require substantial changes is the proposal for disciplines on the interval between publication and entry into force. It is proposed to publish regulation with sufficient time between the publication and its entry into force for interested parties to become acquainted with the new regulation so as to avoid any negative effect to on-going and planned trade transactions. Such a discipline is convincing in theory. But it remains reality in some countries that new or amended regulation enters into force immediately at the time of its publication in the national gazette. This is not covered by the current provisions of Art X and will require legal changes in some countries. There is still disagreement in the Negotiating Group on trade facilitation on this issue, in particular on the question whether there should be a prescriptive maximum time for the interval. Then of course there is the issue of *the advance ruling* which is a written "declaration" provided by a Member upon a request prior to the commencement of trade in goods and which specify the treatment the Member shall provide to the applicant in connection with importation covered under the application made. There is a consensus on the concept but not on the scope. Whiles many Members would like to limit this advancing ruling to a few issues including if no only the goods classification, others propose a large coverage: (i) Goods classification; (ii) application of customs valuation criteria for a particular case; (iii) application of duty drawback; (iv) application of quotas etc.

III.2.1.b. Proposals for clarification of GATT Art VIII on fees and charges connected with importation and exportation

Amongst others, provisions of the existing GATT Art VIII sets the obligation for countries (i) to levy fees and charges which don't exceed the approximate cost of the service rendered and also (ii) to minimise the complexity of import formalities and documentations (this second leg of GATT Art VIII will be discussed under the second category on customs techniques).

The Proposal regarding the levy of fees and charges

Disagreements amongst members over disciplines proposed with regards to the levy of fees and charges are mainly concentrating on the question of the determination of the fees and charges. Although Art: 8 GATT 1994 already states that fees and charges should be limited to the approximate costs of service rendered, this provision has been applied differently by Members. Some tend to calculate the fees taking into account the cost of the service rendered while other simply calculate the fee based on ad valorem basis. For many years there has been any agreement on the determination of this fees and charges. Suffice to recall that even during the Revised Kyoto Convention the attempt to avoid calculation based on ad valorem was done but without success. The current proposal on the table specifically states that fees and charges shall not be calculated on an ad valorem basis. The question remains whether a new legal text specifying that "*fees and charges shall not be calculated on an ad valorem basis*" is a necessary change or addition to the GATT 1994 provisions which obliges Members to collect fees and charges commensurate to the service rendered! For some African Members, this proposal goes beyond GATT Article VIII. Some even argue that the ad valorem basis is the best approach to objectively determine the fee. However other African countries don't support such position and are of the view that there are other alternatives to explore in order to levy the fees approximate to the cost of the services rendered.

Another related discipline is being proposed and could probably resolve the issue over time: to conduct a periodic review of fees and charges with a view to making them consistent with WTO obligations.

Elimination of Consular fees

Some countries, including few African countries still apply consular fees. Their Embassy/Consular in the exporting country verifies the value of goods as contained in the invoice before the goods are exported and collects a fee for such work done. The current proposal on the table jointly submitted by the US and Uganda requests the elimination of such consular fees. As this entails policy changes and loss of revenue, there is resistance from the few countries applying this policy.

Elimination of pre-shipment inspection

The same applies to the pre-shipment inspection. The delegation of Angola, among others, has strongly rejected the elimination of pre-shipment inspection services. But here, there is a possible agreement for technical assistance to be provided to countries which are still using PSI services such as Angola in order for them to have necessary tools, skills and staff, and laboratories, for effective verification of goods classification, checking and valuation of goods without any need for PIS services with a reasonable transitional period. One Member is even proposing to eliminate all such services including those established in importing countries.

III.2.1.c. Transit related proposals

There are several proposals dealing with clarification of the principle of the freedom of transit as expressed in the GATT Art. V, and the proposal for new disciplines with regards to Customs procedures applying to goods in transit. Landlocked countries attach a high interest to this question as they hope to strengthen their position in the negotiations with transit countries. Some parts of the proposals seem to be widely accepted whilst others still remain contentious.

- It is suggested that fees and charges imposed to goods in transit should be published, and reduced to the approximate cost of the service rendered. There is no disagreement on this. Any fee which is not published should not be collected; and periodic review of fees and charges to be conducted;
- Efforts to simplify documentation and inspection requirements
- Promotion of regional arrangements
- Provisions for Custom transit regimes

There is a growing consensus on the above issues but below are issues which still require more discussions:

- National treatment: it is suggested to extend to goods in transit (imported/exported) treatment that is no less favourable than that accorded to domestic goods in terms of documentary control and physical checking. Some Members argue that these goods are different in nature and the issue of national treatment is irrelevant.
- The scope of the principle of freedom of transit is still controversial. Some countries such as Turkey are requesting to avoid any restriction on the *freedom of transit*

- through the territory of transit countries via the routes most convenient for international trade”*
- Some divergences also remain on the scope where some Members are proposing to also cover “pipelines”, which faces strong opposition from other members particularly from the East Europe.

Many of the divergences are due to the difficult distinction between the general legal principle of the freedom of transit and the so-called passage or transit rights, which are state’s sovereignty and are granted to landlocked or transiting states in bi, or regional agreements.

In conclusion, it appears that due to regional integration growing in all over the world including in Africa, many policies and practices to facilitate transit trade are in place or in pipeline, hence this facilitates the future adoption of the current proposed measures. Some issues which are still controversial may be resolved in the future discussions.

III.2.2 Proposals with techniques and high standards methods for the clearance of goods

Some Members ‘proposals on the GATT Art. VIII, and in particular the simplification of procedures and formalities, aim at introducing a large set of principles, and practices applicable to the Customs clearance process. These practices are largely used in developed countries and some newly industrialized economies and contribute to a more simpler collection of revenue whilst at the same time offering faster treatment of goods at border entry points and throughout the entire clearance process. There is therefore no reason for the importer to undervalue the imported goods. The fact that these practices are not commonly applied in many African countries is strongly related to the different role and objectives of revenue collection and Customs. In Africa, where the duties are still high, and a large informal economic sector exists, the risk of wrong declarations is relatively high. A primary objective of the customs’ therefore is the control of the shipments entering and leaving the country to make sure that the collection of revenue is effective. However, it should be recognized that even in Africa many countries are trying to strike the balance between the facilitating and collection and control role of the Customs and revenue collecting agencies. The application of risk assessment and authorised traders in some countries are clear examples. However, it is right to say that proposals below are still raising many questions and resistance in the negotiating group on trade facilitation. The differences in the level of development and the roles assigned to customs reflect the divergences.

a. Risk assessment and management

It is being proposed that “Members will conduct documentary and physical examination based on risk management for the purpose of concentrating on the examination of high risk goods and facilitating the movement of lower risk goods based on appropriate selectivity criteria.

Comments: While the principle is widely accepted due to the fact that many developing countries including African countries are currently applying risk assessment and management in clearance of imported goods, differences remain on the standards to be used. For example, the proposal requests Members to make every effort possible to use international standards including the revised Kyoto

convention and the WCO Risk Management guidelines as basis for application of risk management procedures at national level. This reference to international standards raises concerns particularly for countries which are not parties to various international conventions. Also, the list of criteria to be used in categorising low and high risks/categories is disputed. Some Members want the list to be open for their legitimate policy space in determining the categories of risks particularly in countries where the practice of the undervaluation of goods by traders and other tactics of frauds are widely prevalent.

b. Authorised traders

In addition to the facilitation measures above mentioned, Members are requested to apply further simplified imports and export formalities for economic operators which meet specific criteria of compliance with customs requirements (“authorised traders”). These traders proven to be “good guys” for full compliance with customs rules and procedures are facilitated in expediting clearance of their goods without any physical checking and even without immediate payment of duties as they regularly pay later on.

In many countries, including in African countries this status of “authorised trader” is being applied by customs administrations. The minor differences in the current negotiations lie in criteria to determine this status. Some Members don’t want to mention any list of criteria (such as financial guarantee among others) and rather prefer a reference to “existing standards and norms”.

c. Post-clearance audit:

As a follow-up to the risk assessment and management and authorized trader scheme, Members are requested to conduct post-clearance audit to check the information provided in customs declaration forms on, among others, the value of imported goods, their origin and tariff classification (rather than pre-check such information prior to the release of goods), hence identify the risk and further assess the compliance of traders.

In the current negotiations, Members don’t oppose this principle but want this to be optional rather than being mandatory as it is currently drafted (“*Members shall...*”).

d. Establishment of the Single Window/one-time submission

The current proposal requests Members to establish the single window where documentation and data requirements for importation and exportation and transit are submitted. The single window then distributes the submitted documentations to relevant authorities who will examine them and notify the results to the applicants through the single window. The proposal which is s of now being applied in very few countries is still raising oppositions particularly with regard to its implementation costs.

e. Adoption of international standards

There is a proposal pertaining to the reference to international standards in the substantial disciplines of the future agreements. Such references can be found in many current proposals and there is one proposal which attempts to address this question on a cross-cutting level. Indeed, there exist many international standards, norms and recommended practices which have been negotiated some years back such as the UN layout key and the “standards” of the WCO Revised Kyoto Convention. These international standards are available for implementation by any Member. But they are not mandatory. Some Members feel comfortable in implementing some of the standards but are reluctant to join the international convention to avoid its binding nature. The proposal to bring such international standards in the WTO rules is still raising many voices particularly from developing countries which are not parties to international conventions referred to or which face difficulties to participate in the standard setting process.

Conclusion

Whilst there is a sufficient degree of negotiations and advances on the Trade Facilitation proposed measures, there is still much to do. Divergences remain particularly when it comes to clarify GATT Art V, VIII, X by adding a standard which is not specifically mentioned in the existing GATT articles or when it comes to any reference to the international standards. WTO being a rules-based organization with a dispute settlement mechanism, those Members are resisting to be bound by those high standards.

As part of the single undertaking principle, and given the relatively low level of political will to intensify and finalize negotiations on Agriculture and NAMA, there is still time for the negotiating group on trade facilitation to devise adequate strategies both on the process and substance to arrive at a possible consensus.

Regarding the implementation process, it is clear that timely and continued technical assistance and capacity building will be needed in order for the Least-developed countries and African countries to implement some measures requiring policy changes and IT related customs practices and trade related policies.

The current legitimate reluctance to adopt some of the proposed procedures/standards aimed at expediting clearance of goods could be relatively irrelevant in few years to come when the level of liberalization will substantially increase. Traders will no longer have any reason to undervalue imported goods. And Customs administrations may shift from the focus on revenue collection to mainly trade facilitation.

With the growing use of ITC in our public administrations, the next decade will definitely see more automated administrative and customs procedures and practices. Combined with the upcoming trade liberalization process particularly through EPA outcomes, one could foresee possible jump in expediting clearance of goods and more transparency in trade policies and regulations.

For the purpose of strengthening regional integration towards a truly African Economic Community in some years ahead, there is an urgent need to faster sub-regional integration (EAC, SADEC, ECOWAS, UEMOA, etc.) by, inter alia, simplification and harmonization of

customs and border procedures and practices (it goes without saying that regional integration covers the overall economy but trade can play an spill over effect). The removal of any unnecessary NTB as well as infrastructure development (including railways, ports and roads) will substantially contribute to reducing costs of doing business particularly for the business community in the landlocked countries paving the way for FDI inflows, economic growth and development as a whole.

End