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**UNICE proposal to set up a special procedure for international arbitration  
on customs matters**

**I. Introduction**

1. Disputes between economic operators and customs authorities are normally dealt with through the legal system of the country concerned. Generally speaking, this works well but there are some circumstances in which it is difficult for operators to obtain satisfactory treatment of their complaints.
2. In particular, in some countries, the legal system fails to provide an efficient or cost-effective mechanism for dealing with customs disputes. Furthermore, there is no direct remedy available in any country to an operator who believes that local law or customs' practice fails to reflect correctly the requirements of an international agreement. UNICE believes that these two problems require different solutions.

**II. Unsatisfactory legal systems**

3. UNICE believes that the most appropriate solution to this problem would be to strengthen the provisions of the revised Kyoto Convention which already contains quite specific requirements in connection with appeals against decisions of a customs authority.
4. Ways in which these provisions might be strengthened include more specific guidelines on timing and costs, the latter aimed at ensuring that the first stage of appeal, at least, should be readily available to all operators.
5. Operators face particular difficulties in dealing with disputes in foreign jurisdictions in which they have no presence. It would be helpful, therefore, to include in the Convention specific provisions to give foreign operators the same rights and access to the appeals processes as domestic operators.

**III. Failure to reflect international agreements in national law and practice**

6. At present, the only remedy available in disputes arising from failure to implement international agreements is to complain either to the Customs authority concerned or at political level. However, there can be no guarantee that even a wholly justified complaint will be considered, let alone upheld.
7. Furthermore, this approach is probably not a realistic option for foreign operators whose sole remedy, therefore, is to try and persuade their own customs authority to support their complaint and to raise it either with the foreign customs authority concerned or the body responsible for managing the international agreement.
8. However, this is inevitably a time-consuming process with, in this case again, no guarantee that the complaint will even be seriously considered.

#### **IV. International customs arbitration procedure**

9. UNICE believes, therefore, that an international arbitration procedure should be established to give individual economic operators direct access to an independent authority from which they can seek redress against decisions of customs authorities which they believe to be based on a failure correctly to:
  - incorporate the provisions of international agreements in national law; or
  - interpret or implement such provisions.
10. The procedure should be set up under the auspices of the WTO with arbitrators nominated by both the WCO and the business community and with an independent chairman. Such a framework should allow for direct access to arbitration by economic operators while decisions need to be taken within a fixed period of time.
11. The procedure should be simple and transparent and designed to provide decisions as rapidly as possible and at the least possible expense to both the complainant and the Customs authority concerned.

#### **V. Conclusion**

12. UNICE is ready to reflect on the proposal raised in this document with the EU institutions in order to find a solution which address the justified concerns of economic operators.