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UNICE PRIORITIES FOR THE DDA TRADE FACILITATION NEGOTIATIONS

Summary

UNICE supports the negotiation of a legally binding multilateral agreement on trade facilitation. A WTO Trade Facilitation Agreement, by establishing core standards for the border management of trade, would create a level playing field for all WTO members, reducing the risk of unpredictable government intervention.

A WTO Trade Facilitation Agreement should be reviewable to encourage WTO members to move gradually towards higher standards in simpler, more efficient and less costly procedures. It is key that members are given the opportunity to update the Agreement to adapt rules to an increasingly challenging customs environment.

UNICE recognises that some developing countries would need more time to implement certain commitments and that LDCs will only be able to make less ambitious commitments. UNICE calls on WTO members to develop an effective aid programme centred on specific measures, supported by appropriate training, technical and financial assistance.

UNICE urges WTO members to give priority to the following five issues in the trade facilitation negotiations:

1. Minimisation and/or elimination of fees and charges
2. Procedures for legal recourse and appeal, complaint or mediation services in the case of disputes with customs
3. Establishment of a single window
4. Publication of trade regulations
5. Accelerated and simplified procedures for release and customs clearance of goods

UNICE believes that an ambitious and binding WTO Agreement on Trade Facilitation will help significantly to facilitate trade for both developed and developing countries and to reduce costs for importers and exporters.

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Introduction

With the ongoing reduction in customs duties, formalities at borders have a growing impact on the costs of trade and limit the ability of companies - especially small companies - to develop internationally. In addition, these procedures and rules can easily be misused by countries to restrict imports for protectionist purposes. Companies today rank customs and trade procedures as one of the most important obstacles to market access.

Reducing administrative obstacles would stimulate smooth trade flows and oil the wheels for growth for all WTO members, industrialised countries and developing countries alike. At the same time, this would enable border administrations to redirect their activities towards dealing with new risks (IPR, fraud, security, phytosanitary, etc.) in a proportionate and business-friendly manner. Improved procedures and rules would also make customs and border services more efficient in raising revenues, reducing fraud and corruption and generally fulfilling their obligations.

An optimal design of customs procedures requires the combination of relevant expertise from the public sector and the private sector, and the incorporation of technological progress. This is encouraged by a relation of trust between the authorities and private sector actors.

A WTO Agreement on Trade Facilitation

To better tackle these issues, **UNICE supports the negotiation of a legally binding multilateral agreement on trade facilitation.** By establishing core standards for the border management of trade, an agreement would create a more level playing field for all WTO members, reducing the risk of unpredictable government intervention. Only a binding WTO Trade Facilitation Agreement would provide the political will and commitment to pursue much needed reform and modernisation of the customs environment.

The agreement should provide a basic set of rules for transport procedures and documents, customs procedures, modern control techniques, data collection, automation, integration of export and import procedures, payments, technical and labelling requirements, national appeal procedures against administrative decisions.

Non-compliance with GATT Articles V (transit), VIII (fees and formalities) and X (transparency) remains a serious problem for business. Consequently, the objective of a Trade Facilitation Agreement should be to clarify these articles and to strengthen their implementation.

A WTO Trade Facilitation Agreement should also be **reviewable** to encourage WTO members to move gradually towards higher standards in simpler, more efficient and less costly procedures. It is key that members are given the opportunity to update the Agreement to adapt rules to an increasingly challenging customs environment.

UNICE recognises that some developing countries would need more time to implement certain commitments and that Least Developed Countries (LDCs) and weak and vulnerable countries will only be able to make less ambitious commitments. This is why UNICE has called for a ladder approach to trade facilitation which would require more advanced countries to facilitate trade more quickly than less advanced countries. The Agreement must measure and stimulate progressive improvement in the facilitation of trade and the adoption of best practices and higher standards, ensuring that more advanced countries are not hindered in any way from striving for greater trade facilitation.

To ensure that the poorest WTO Members can also reap the benefits of a Trade Facilitation Agreement, UNICE calls on WTO members to develop an effective aid programme centred on specific measures, supported by appropriate training, technical and financial assistance. This programme should be closely monitored to ensure that the beneficiaries and donors are receiving value for money and that these programmes lead to real improvements on the ground.

UNICE encourages all WTO Members and regional groupings to define their needs and priorities in terms of technical assistance, and then to design with the WTO the specific trade facilitation strategy best suited for the country in question. UNICE welcomes the commitment to provide technical assistance to developing countries (in particular to LDCs and to landlocked developing countries, LLDCs) in the field of trade facilitation.

Moreover, UNICE calls for a strengthening of WTO cooperation with the international financial institutions (especially the World Bank) and the organisations with competence in this area (WCO, UNCTAD, IMO, ICAO), in partnership with business, to maximise their efficiency. The World Bank activities on transport can be very helpful to provide better infrastructure and enhance efficiency in procedures related to transport services in developing countries. Better coordination between WTO actions and those of other organisations will help to implement a much wider process of reform.

Finally, UNICE encourages WTO Members to look at trade facilitation in the broader context. The GATS negotiations – which should include the liberalisation of transport, computer and business-related services could also contribute indirectly to reducing trade costs and delays. The work of the WCO and UNECE/CEFACT should also be taken into account. Similarly, any WTO Trade Facilitation Agreement should also take into consideration the need to ensure that security policies and security measures are proportionate and are developed in a manner that contributes to trade facilitation rather than trade restriction.

Priority issues for a WTO Trade Facilitation Agreement

A WTO Trade Facilitation Agreement must comply with the following general principles:

- legal certainty, predictability and **transparency** of information;
- **non-discrimination** to guarantee equal and predictable treatment of all products regardless of their origin;
- **proportionality**, speed and least trade-restrictiveness to ensure that administrative and regulatory measures are developed and applied with a view to facilitating trade.

On the basis of these principles, UNICE urges WTO members to **give priority to the following five issues** in the trade facilitation negotiations¹:

1. Minimisation and/or elimination of fees and charges (G.2)

UNICE supports minimising and/or eliminating border fees and charges. The latter should be properly reviewed to ensure that they relate to the costs of services rendered rather than serving protectionist or revenue-raising objectives. Fees and charges should therefore be:

- Non-discriminatory,
- levied as fixed fees rather than applied on an *ad valorem* basis,
- publicly available, ideally on a website, matching real administrative expenses,
- notified to the WTO before implementation.

2. Procedures for legal recourse and appeal, complaint or mediation services in the case of disputes with customs (E.1)

Importers and exporters should be given the right to:

- an independent and non-discriminatory judicial or administrative review of customs decisions,
- participate in the different stages of the appeal procedures.

Administrative appeals should be based on specific guidelines on timing and costs of the procedures, avoiding complex and lengthy procedures.

In addition, the WTO could consider creating an international arbitration procedure in conjunction with the WCO to mediate disputes between traders and WTO Members that could not be fairly mediated in the national appeals procedure. This procedure should be based on flexibility and the adoption of quick decisions avoiding unnecessary delays.

¹ Reference to the WTO compilation of Members' proposals (TN/TF/43/Rev.6) dated 8 May 2006.

3. Establishment of a single window (H.1h)

WTO Members should work towards establishment of a single administrative window to allow traders to fulfil all import, export and transit regulatory documents and requirements in a single access point at one time. This should be done firstly ensuring better coordination between the different administrations and agencies involved in customs issues. In view of the proliferation of regulatory controls worldwide, rationalisation of procedural aspects of controls is essential to streamline trade flows.

The single window should bring:

- greater certainty to enterprises,
- enhanced efficiency,
- reduction of resources needed,
- set of data to cover the absolute minimum,
- more cost-effective and efficient interaction between customs administrations and companies.

The objective should be, over a transitional period recognising the level of development, progressively to create an IT environment connecting all administrative agencies that companies have to deal with as importers/exporters (statistics, justice and home affairs, port or airport authorities, etc.).

4. Publication of trade regulations (A.1)

WTO Members should publish all laws, regulations, judicial decisions, administrative rules related to customs procedures and origin. Complicated and divergent rules of origin constitute an important barrier to trade. Members should publish these regulations in their national language and in one of the official languages of the WTO on a website easily accessible to importers and exporters, although information on paper should also be available. Information should be available at no cost.

Any regulation or generalised customs practice which is not duly published in its updated version should be considered void, and contestable before the national appeals procedure of the country concerned and the WTO dispute settlement mechanism.

5. Accelerated and simplified procedures for release and customs clearance of goods (K.1)

WTO members should commit to introduce simplified customs release and clearance procedures. Members should publicly establish their own national clearance times, based on common standards such as the WCO Time Release Study, make these publicly known, preferably on a website, and commit progressively to reduce them. The objective will be to expedite the release of

goods avoiding unnecessary delays. A process of regular assessment would enable the WTO to track concrete progress in delivering trade facilitation.

In order to achieve minimum delays for goods clearance, the flow of information could be separated from the actual flow of goods. Through electronic processing in combination with pre-notification, customs clearance and goods flows can be speeded up.

The possibility of pre-arrival clearance should help traders to file their documentation prior to the arrival of the goods at the port of entry, allowing customs clearance in advance and release of the goods immediately after arrival. It should also lead to better customs management and to savings on storage fees. To further improve efficiency, systems should be developed where the same data used for outward clearance of exports could also be used for import clearance by the importing country.

UNICE supports the introduction of an authorised trader principle, insofar as this status genuinely results in reduced costs for business through facilitation and simplification. Authorisation should enable major simplifications, fast-track clearance procedures, lower controls and reduced documentation to a minimum. Authorised trader schemes should operate in a non-discriminatory and transparent manner and should ensure that both big and small companies can benefit from them. Recognition of an authorised trader should be accepted by all WTO Members.

Conclusion

UNICE believes that an ambitious and binding WTO Agreement on Trade Facilitation will help significantly to facilitate trade for both developed and developing countries and to reduce costs for importers and exporters.
