Geneva, 15 February 2007

CALL FOR RESUMPTION OF THE DOHA ROUND TRADE FACILITATION NEGOTIATIONS IN THE FRAMEWORK OF THE WORLD TRADE ORGANISATION

Introduction

In Europe, international road haulage is governed by a vast number of international conventions usually agreed under the aegis of UNECE. We rightfully consider any practice which departs from these conventions as a breach of the legal framework.

The framework governing road transport in the rest of the world is far less comprehensive. This is why, although some non-European countries may accept a "European" legal solution (such as e.g. a number of CIS countries), they should not be criticised if they decline to do so or choose to act otherwise.

As for international road transport, the GATT and GATS are the only really global legal acts common to Europe and the rest of the world. The legal framework resulting from these agreements, although of consequence, remains relatively modest.

In any case, for a sector providing services such as international road transport, whose very mission is to support trade, it is essential that both the GATT – freedom of trade in goods – and GATS – freedom of trade in services – be applied.

It may be difficult to find legal grounds to support some motions in this document. It is often impossible to assert that non-compliance with them amounts to a breach of *WTO agreements*. Rather, non-compliance may go against other conventions or simply constitute bad practice contrary to common sense.

During the WTO negotiations on trade facilitation, which have been suspended since July 2006, several countries suggested extending the obligations arising from WTO agreements. Some problems raised in this document as barriers still impeding the development of international road transport cannot be referred to a specific provision of the present GATT or GATS and rather echo new ideas put forward by several WTO Members to widen the scope of the GATT.

Existing barriers

- **Long waiting times at the borders** for trucks:
  - *Administrative delays and restrictions* (in breach of GATT Article V § 3)

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- *Burden of national documentation requirements* (which may be contrary to GATT Article V § 4 unless the documentation requirements are "reasonable", as well as to GATT Article VIII, § 1 c/. However, one still has to reach a consensus as to the meaning of "reasonable").
- *Non application of EDI and use of paper-based documents*, which often do not comply with the UN Layout Key. (Although this does not go against any international convention, this measure – advocated by several governments in their new proposals to WTO – makes eminent sense.)
- *Discrepancies between the opening times* of the sanitary, phytosanitary, veterinary and other services and those of Customs (neither GATT nor GATS require this. However, this measure – advocated by several governments in the framework of the suspended negotiations – makes sense and results from the Kyoto Customs Convention and the Convention on the Harmonisation of Frontier Controls of Goods (UNECE, 1982), although a vast majority of WTO Members have not yet acceded to the latter.)
- *Understaffing, human factors* (this may amount to not directly complying with the commitments laid down by WTO and other agreements where understaffing and human factors – in particular through lack of or inadequate training – does not make it possible to meet the requirements of international legal instruments.)
- *Lack of appropriate infrastructure,* lack of facilities at terminals, no specific lanes dedicated to the transport of dangerous goods (Common sense requires that controls be separate for goods which, by their very nature, call for specific checks – be they either faster or lengthier than usual. Minimum infrastructure requirements have been identified in Annex 8 of the Convention on the Harmonisation of Frontier Controls of Goods (UNECE, 1982). However, this does not directly result either from GATT, or from GATS.)
- *Breach or non application of international agreements and conventions* in relation to border crossing (non application may be due to the fact that a given State is outside the scope of legal instruments facilitating border-crossing. In that case, there is no breach of said instrument. However, if a State has ratified a convention – e.g. on the harmonisation of frontier controls – and does not comply with it, this amounts to a breach of the said convention. Nevertheless, such a breach cannot be reprobated in the framework of the GATT or GATS, but only in the framework of those instruments violated by the States having ratified them).

- **Transport quotas and licences** for bilateral and transit transport operations, which are usual practice or even the rule for a majority of bilateral agreements between governments on international road haulage (leading to an infringement of GATT Article V, § 2), impose restrictions on the performance of international services and, indirectly, restrict the flow of international trade (infringement of GATS Article I, § 1 and Article XVI, § 2);
- **Non-compliance with most-favoured-nation (MFN) treatment** (infringement of GATT Article V, § 5 and of GATS Article II) in bilateral arrangements based on reciprocity, often leading to *discrimination* between the various national flags and means of transport (infringement of GATT Article V, § 2);
- **Requirements for transhipment** from the trucks of certain countries to those of other countries in bilateral or transit transport (this goes against GATT Article V and GATS Article I which are based on the right of Member States' means of transport to enter the territory of another Member State in transit or to deliver or pick up goods for transport.)

- **Mandatory convoys** for foreign trucks traversing or entering certain States (This practice is not prohibited by GATT and GATS. However, the TIR Convention only authorises mandatory convoys in certain very specific cases. One cannot blame 2/3 of WTO Member States, not parties to the TIR Convention, for escorting trucks; however, one may request them to forego this practice).
- **Mandatory use of certain commercial services** such as those of cross-border forwarding agents. (This mandatory use of the services of customs brokers may result from complex documentation drawn up in a national language incomprehensible to foreign carriers, which leads to an increase in their transport costs and penalises them in relation to local operators. (In the latter case, these measures then become incompatible with GATT Article VII, § 1 c/ and GATS Article I.)
- **Problems in obtaining visas for professional drivers,** where no special treatment exists for the category of drivers (which would cover multiple-entry and long-term visas, reasonable documentation for visa applications, reasonable fees, simplified procedures e.g. through national transport associations, etc.); professional drivers are often treated worse than other professionals (seamen) or tourists travelling for leisure. (The problem of driver visas is settled only indirectly by GATS Article XXVIII and the Annex on movement of natural persons supplying services under the Agreement as well as in very general terms by Annex 8 of the Convention on the Harmonisation of Frontier Controls of Goods (UNECE, 1982). Any Member is entitled to regulate the entry or temporary stay of natural persons provided that such measures do not nullify or impair the benefits accruing to other Members under the terms of a specific commitment made by the latter. Further, one may consider that differentiating between seamen and drivers leads to a discrimination between transport modes, which is prohibited by GATT Article V, § 2).
- **Transit or quasi transit fees** still in force in certain States under the pretext of environmental protection (*restriction in disguise*) although the rates have no relation to the real costs of road wear or environmental protection. The real objective is to protect national means of transport or to fulfil tax purposes (which is contrary to GATT Article V, §§ 3 and 4). The same may apply to the latest wave of new road user charging systems, the rationale of which to calculate rates and taxes is often incontrollable. Such systems are introduced without consulting professional organisations of carriers abroad. (This lack of consultation cannot be considered as breaching a commitment under the GATT or GATS. However, several governments have suggested such a procedure as part of their proposals during the last round of WTO negotiations).
- **Introduction of new measures to improve security:** although these are generally necessary, there is a risk of their turning into a considerable barrier (*restriction in disguise*) to international road transport (and trade) unless they afford real benefits to the certified and approved transport operators and are implemented together with modern tools (e.g. joint and coordinated controls at the borders, single window, pre-notification systems to customs that are actually operational, etc.). (Only if these “new measures” proved “unreasonable” or led to “discrimination” between persons and transport modes could one invoke a breach of the GATT or GATS).
- **Introduction of new governmental measures without prior notice or with too short a notice,** sometimes only in the national language; operators are taken by surprise and drivers are only informed of sudden changes when on their way to their destination. (One may reproach non-compliance with GATT Article X and GATS Article III since measures relating to or affecting transport require prior publication).
- **Non-accession to international conventions facilitating transport or – if acceded to – lack of harmonisation in applying such conventions** relating to various aspects of international transport such as national highway codes, road signs and signals, customs and trade regulations, technical standards and/or vehicle approval certificates, driving

licences, insurance required, enforcement of the law and sanctions, etc. (Non-accession to a convention does not constitute any breach of the GATT or GATS. Similarly, neither does the application of customs or trade regulations which are incompatible with conventions such as the TIR or CMR or those on road traffic, constitute a breach of the GATT or GATS, but only a breach of the above-mentioned conventions, provided that the country in question has acceded to them).

- **Establishment of regional transport and/or transit agreements** between Member States by neglecting, or even overriding existing (UN) multilateral arrangements, which also leads to discrimination against carriers from countries not included in such regional agreements. (If such is the case, this is a breach of GATT Article V. However, one then has to solve a conflict between this article and GATS Article I, § 3 since it allows, subject to certain conditions, measures incompatible with the GATS and GATT).
- **Deadlines too short to appeal** against sanctions imposed by administrative or criminal law on international carriers/drivers en route, which *de facto* deprive foreign carriers wishing to pursue the transport operation to meet contractual deadlines of means to appeal against unfair decisions. (Here again, there is no violation of the GATT or GATS. Nor is there even any formal discrimination against foreigners in relation to national carriers since the rules are identical for both. In this case, foreigners are however at a disadvantage since, from a practical point of view, the fact that they are only briefly staying in the country where the infringement was established may make it difficult for them to appeal in a timely fashion.)

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