

Trust Fund for Trade Facilitation Negotiations Technical Note No. 2

Disciplines on the levy of fees and charges

Background

A cross-border trade transaction incurs various services delivered by public or quasi-public agencies mandated to perform the service on behalf of the administration. A payment of user fees and charges is required for many of those services. GATT Article VIII sets general disciplines regarding all fees and charges "... imposed ...on or in connection with the importation and exportation... " with the exception of "...taxes within the purview of (GATT) Article III...". In compliance with Article VIII.1(a) these fees and charges have to comply with three criteria: they have to be "...limited in amount to the approximate cost of services rendered...", should not "... represent an indirect protection to domestic products, and should not represent ...a taxation of imports or exports for fiscal purposes". The first condition limiting the price of the service entails another requirements: the fee should be related to a service. The United States – Customs Users Fee panel further ruled that the service has to be a direct and immediate service "...rendered to the individual importer in question".¹ Standards 3.2 and 9.7 of the General Annex of the revised Kyoto Convention likewise requires that service delivered by customs shall be limited to the approximate cost of service rendered.

In reality, however, user charges and fees are often used for raising government revenue in general and therefore have a fiscal character prohibited by Article VIII.1(a) and are calculated on the basis of ad valorem which may be a violation of Article VIII.1(a).

Complying with payment formalities involves costs for businesses. There are multiple points of collection of the fees with different opening hours, varying payment formalities. This requires traders to carry multiple bills and moneys, and carrying of additional paper documents as receipts. From a trade facilitation perspective, the levy of fees and charges should therefore be simplified as much as possible, be based on objective and transparent parameters, correspond in a reasonable way to the costs of the service rendered, and be administered in a consistent way.

Benefits

The simplification of the fees and charges and the application of a cost-recovery calculation for the calculation of the price of the fee also benefit the administrations collecting the fees. The review of the currently applied fees allows identifying services that are undercharged, due to outdated prices, as well as overcharged areas. On a general level, if fees and charges are perceived as fair, justified and reasonable related to value delivery by the service, traders are more likely to comply with them. One reason for doing so is the fact that the costs of compliance are lower than the costs for

¹ § 80 of the report of the Panel adopted on 2. February 1988, (L/6264 – 32S/245).

seeking illegal or legal means to avoid payment. The administrations thus have to spend fewer resources for ex-post enforcement.

Issues to consider

What services to charge for?

Fees and charges are imposed to recuperate the costs of a service delivery by the State. Services provided by the State are of obligatory character if the utilisation of the service or the public infrastructure is mandatory for by regulation. These services are statutory services. Public services can also be non-statutory services if they can be used, at least strictly legally speaking, on voluntary basis.

It is possible for a public agency, to provide both statutory and voluntary non-statutory services (e.g. the processing of the goods declaration by Customs as mandated by regulation and an operation of an telephone information service).

Given this mixture of services provided to the public and the traders the determination for which services to levy fees or charges is an important and political question. Not all public services are subject to a service charge.

Services can be entirely or partially subsidized by the government's regular budget for public interests reasons.

Different service areas, such as information services or processing services by Customs can be charged differently. Every service area can also have ranges of services for which, again, a different fee system can apply. This relates in particular to the priority or premium treatment which can be charged differently.

How to set the charge and define the incurred costs?

Setting the price of the fees and charges is complex as the task relates to selecting the appropriate pricing framework and assessing the costs to be taken into consideration. The price setting is usually not undertaken in a discretionary manner. Most countries use for this purpose either the so-called equivalence principle, which is based on the proportionality of the utility/value to the user and the costs of the service delivery alike, or the cost recovery principle. This principle provides that a charge should be set to recover all costs incurred in the provision of the service. Charges are set equal to the marginal cost or the average cost of the service in question.

With regards to the price of the fees and charges GATT Article VIII .1(a) set an overall limit to the price imposed². This limit is the "approximate cost of service rendered". The price can thus not exceed the expenditures related to the provision of the service.

The cost-recovery principle is widely used as a basis for the calculation of public fees and charges..

The cost-recovery principle is not the only concept used in public finance. The non-application of the cost-recovery principle can be justified by a political reasoning of whether a charge is fair, equal, and reasonable. The so-called equivalence principle, for example, is. In a diversion from the strict cost recovery, charges can therefore be set above or below costs recovery. If the full cost of providing a service is not entirely

² There is no different interpretation of the meaning of the requirements of GATT Article II.2(c) and Article VIII:1(a)

recovered through the charges, some cross-subsidisation among some services or aspects of service delivery may prevail.

Assessing the costs of a service is difficult as it requires putting a monetary value, ideally reflecting the actual cost, on all cost factors. In general the full costs, meaning the total costs of all resources used in the provision of the service, should be assessed. This includes labour and associated salary and wage costs, materials, operating expenses, accommodation and corporate overheads and capital related costs. The assessment of the so-called overhead and joint costs of the service can sometimes be problematic, although financial accounting principles have been developed to provide guidance on this issue. Another difficulty is the inclusion of the external costs, costs to the society, and opportunity costs in the accounting.

Administration of fees and charges

Fees of non-mandatory nature, and their modalities of the determination of the price and the collection process are usually set by secondary legislation not requiring parliamentary approval legislative procedures. Fees of mandatory nature however, require legislative approval

The introduction of new or the amendment of charges is thus usually subject to approval by a superior executive body ministry or the parliament. Details of the approval and the rights of agencies to amend charges vary from country to country. A review of the services and the charges should be undertaken regularly and are, at intervals subject to a more fundamental review a general auditor for example. The objectives of a fundamental review are to assess if the financial objective of costs recovery is achieved, if service delivery efficiency and effectiveness can be improved, and if the adequate assets for the service are provided. Such a review should also take into consideration the consolidation of fees, and the use of ICT to facilitate the payment. For example, the large majority of Customs automation software now offers functionalities of e-payment allowing the payment through commercial or national banks by electronic transfer.

A related question to the levy of charges is the earmarking of revenues. Commonly revenues from the collection of fees and charges are earmarked for the budget of the same agency which provided the service and can be invested into the functioning of this service only.

Implementation issues

Review of fee structures to minimize their number and diversity

Countries considering a review of their fee structure could be guided by the following:

- Conduct a review of current user charges and fees related to the importation, exportation or transit of goods;
- Categorize the services charged for in service range and categories;
- Ascertain costs for each of these services and analyse if the current charges are appropriate;
- Based on these findings revise existing charges, consolidating where possible fees and increasing efficiency of administration and collection;

- Consider drafting guidelines for the levy of charges intended to be used by public sector and setting up a pool of experts to assist agencies in the devising of their charges.

Applicable fees and charges should be published through the appropriate medium (trade journal, gazette, or Internet, wherever possible). It may be advisable to make a list of applicable fees available in the offices where they are due to be paid.

References and available tools

UNCTAD

Further Technical Notes related to the WTO negotiations on trade facilitation are available via <http://www.unctad.org/technicalnotes>. See in particular:

- Technical Note No. 13 (Simplification of trade documentation using international standards)
- Technical Note No. 21 (ASYCUDA)

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