

COMMUNICATION FROM JAPAN AND MONGOLIA

Revision

The following communication, dated 7 December 2007, is being circulated at the request of the Delegations of Japan and Mongolia.

PROPOSALS ON APPEAL PROCEDURES

1. The following textual proposal is submitted by Japan and Mongolia for consideration by the Negotiating Group. It is closely based on the proposals on appeal procedures made in the joint communication TN/TF/W/97 of 10 May 2006 and takes account of the discussion and other submissions on this issue in the Negotiating Group.

2. We acknowledge that some provisions require transitional implementation by developing-country Members because of their lack of capacity to meet the obligations. However, several core elements such as publication of trade-related law and regulations in accordance with Article X of GATT 1994 should be implemented by all the Members immediately upon the entry into force of the Trade Facilitation Agreement because of the basic nature of such provisions and the fact that the new agreement does not add any new obligations to the current system of GATT 1994. Similarly, we believe that national treatment, most-favoured-nation treatment, general and security exceptions provided for in Articles I, III, XX, and XXI of GATT 1994 should apply to all the Members immediately even if those concepts are not stipulated in the new agreement. The following is an example of text which explicitly incorporates Articles XX and XXI of GATT 1994 into the new agreement:

With regard to general and security exceptions, the provisions of Articles XX and XXI of GATT 1994 shall apply.

3. The co-sponsors propose that S&D treatment and TA & CB be taken forward through the development of a horizontal mechanism that would take account of the needs, priorities, and implementation capacities of developing and least-developed Members in relation to commitments. A number of relevant submissions on these issues have been made to the Negotiating Group on Trade Facilitation from Members such as TN/TF/W/81, TN/TF/W/82, TN/TF/W/95, TN/TF/W/137, TN/TF/W/142 and TN/TF/W/147.

Textual proposals

I. APPEAL PROCEDURES

A. RIGHT OF APPEAL

1. Each Member shall provide that any person to whom customs or another relevant border agency issues a decision has the right, within its territory, without penalty, to:

- (a) administrative appeal independent of the employee or office of the agency which issued the decision; and
- (b) judicial appeal of the decision.

2. The legislation of each Member may require administrative appeal to be initiated prior to judicial appeal.

B. TRANSPARENCY

3. Members shall ensure that appeal procedures are carried out in a non-discriminatory manner, and that information concerning such procedures is made available to traders in such a manner as defined in Article [X]. Traders shall be allowed to be represented at all stages of appeal procedures by independent legal counsel.

C. SET PERIOD

4. Members shall ensure that customs and other relevant border agencies adopt and maintain set periods for their review and correction of decisions under the appeal procedures. The appellant shall have the right, for procedures mentioned in paragraph 1(a), in a case of undue delay, to bring the case to the next higher instance.

II. OPPORTUNITIES TO RECEIVE INFORMATION AND GRIEVANCES

5. Members shall ensure that customs and other relevant border agencies afford opportunities for traders, upon request, to receive information concerning the administrative decision such as the reasoning of the decision including applied laws and regulations.

6. Members shall ensure that customs and other relevant border agencies receive grievances from traders concerning the administrative decision they are addressed to.¹

¹ Note: Grievances would be received, for example, at existing enquiry points, divisions, sections of customs and other border agencies concerned depending on each Member's situation.