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Negotiating Group on Trade Facilitation

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COMMUNICATION FROM AUSTRALIA AND CANADA

The following communication, dated 16 March 2005, from the Delegations of Australia and Canada, is being circulated in advance of the Negotiating Group meeting of 22-24 March.

POSSIBLE COMMITMENTS ON ENHANCED CLEARANCE PROCEDURES - PROVISION FOR COLLATERAL OR MONETARY SECURITY

A Proposal by Australia and Canada

I. BACKGROUND

1. The timely clearance of imported goods is often impeded by the fact that Customs authorities do not allow for the release of goods until the customs obligations of traders (e.g., importers, exporters, warehouse operators or international transporters) are fully discharged. One way to address this significant impediment to trade facilitation is to separate the process of fulfilment of customs obligations (including the payment of duties) from the actual release of goods. Several Members have separated these two processes through the use of collateral or monetary securities (e.g., bonds or other financial guarantees).

II. PROPOSAL

2. We suggest that WTO Members consider commitments on the release of goods from Customs prior to payment of duties in cases where a trader provides sufficient guarantees in the form of collateral security or some other appropriate instrument with respect to the ultimate payment of duties and taxes, under circumstances such as the following:

(a) where delays are encountered in completion of final clearance procedures (as in cases awaiting a decision on the correct tariff classification);

(b) where goods are imported to fulfil a specific purpose and subsequently duty-paid or exported after use (as in cases where there is authorization to import goods for "inward processing" without payment of duties and taxes, providing the finished goods are subsequently exported).

3. A similar relevant process is already reflected in Article 13 of the WTO Agreement on Customs Valuation (CVA). While the existing GATT provisions do not prevent the provision of collateral security, it is only within the context of the CVA that a requirement to do so exists.[1]

4. Collateral or monetary securities operate in the following manner:

- A trader who wishes to ask for the release of a given good prior to payment must post a security instrument with the Customs authorities. A security can be in the following forms: cash, a certified cheque, a transferable bond issued by the Government or an approved financial institution, or a surety bond issued by an approved issuer.

- Upon final determination of the amount of duty or charges payable, the Customs authorities seek payment from the trader. If the trader cannot and will not fulfil its obligations, the Customs authorities can obtain payment from the security instrument.

- Bonds could be limited to a <u>single transaction</u> or cover <u>several transactions</u>, including importations across the customs territory (continuous bonds).

- Bonds may also be employed for an <u>expanded range of uses</u> to meet a variety of import circumstances. As an example, surety bonds may include such uses as immediate clearance/delivery in the case of express shipments.

5. <u>Special and differential treatment</u> provisions reflecting the specific circumstances and capacity to deliver collateral security services in individual Members could be incorporated within commitments, for example through provisions for deferred implementation.

III. BENEFITS

6. The availability of collateral security for release of goods is of key importance to traders, especially small- and medium-sized ones. It provides for quicker release of goods, costs savings from reduction in delivery delays and greater certainty and predictability as to cash flow management and shipping times.

7. For governments, collateral security instruments such as bonds provide a guarantee that the importer will faithfully, and in a timely manner, abide by all laws and regulations governing the importation of goods into the country. In this manner, a bond is not designed nor intended to protect the importer, nor does it relieve the importer of any obligations, rather it protects the government while clearing the way for faster release of goods. Governments benefit from this system by securing revenue owed.

8. The lower transaction costs and increased certainty in shipping times provided by the provision of collateral security will also encourage greater investment and much needed flows of

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[1] Article 13 of the CVA (also known as the Agreement on Implementation of Article VII of the GATT 1994) reads as follows:

> *If, in the course of determining the customs value of imported goods, it becomes necessary to delay the final determination of such customs value, the importer of the goods shall nevertheless be able to withdraw them from customs if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties for which the goods may be liable. The legislation of each Member shall make provisions for such circumstances.*

capital to developing countries. Availability of collateral security also helps to establish trust between Customs authorities and traders and, hence, to reduce incentives to circumvent regulations.

IV. IMPLEMENTATION COSTS

9. Since provision of collateral security is a financial service offered by the private sector, there are no direct costs for governments to authorize their use in import transactions. There may be some incremental costs in training officers in wider use of collateral security arrangements. That being said, since the Agreement on Customs Valuation already requires Parties to provide for security instruments in cases of delays in the final determination of customs value, incremental costs could be limited.

V. TECHNICAL ASSISTANCE

10. Technical assistance efforts in training and administration of Customs can include elements focusing on ways to improve revenue collection and enforcement of Customs laws, including through systems allowing for collateral or monetary securities. These elements could allow developing economies to gain further access to a policy tool that provides the means to facilitate trade by enhancing certainty and predictability in transactions.