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Negotiating Group on Trade Facilitation

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COMMUNICATION FROM THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU

The following communication, dated 18 March 2005, from the Delegation of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, is being circulated in advance of the Negotiating Group meeting of 22-24 March 2005.

TRADE FACILITATION: POSSIBLE MEASURES TO IMPROVE GATT ARTICLE VIII ON FEES

I. INTRODUCTION

1. Unreasonably high fees charged by Members in the course of international trade will increase the transaction costs for traders, and thus reduce the opportunities for conducting international business. It is also the small- and medium-sized enterprises (SMEs) that are the most affected, because they survive on very tight profit margins. For example, we often hear complaints from traders about high fees for **consular invoices and certificates** charged by importing Members. Not only do high charges and an excessive amount of documentation increase transaction costs, but they also cause inconvenience to applicants, often to the point where exporters are discouraged from pursuing international trade. Moreover, it can be especially burdensome when there is no consulate office in the exporting Member country, and the exporter has no choice but to apply through nearby consulate office in another country.

2. GATT 1994 Article VIII:1(a) requires that "*all fees and charges of whatever character (other than import and export duties and other taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.*" One of the contentious issues about this provision is how to estimate the approximate cost of services rendered. Although past dispute settlement cases have touched upon the definition of a fee or charge limited to the approximate cost of services rendered, there is still no clear guidance on exactly how the approximate cost of services rendered should be calculated.

3. Some Members have contributed their thoughts on how to proceed with this issue. For example, Hong Kong, China, has suggested that "Members may consider the desirability of introducing basic GATT/WTO principles like necessity and review " (G/C/W/398). The EU argues that "the fees or charges in question may not therefore be calculated on an *ad valorem* basis" (G/C/W/394). The United States proposed to "establish specific parameters for fees charged by Members under Article VIII of GATT 1994" (TN/TF/W/14).

II. POSSIBLE MEASURE FOR CONSIDERATION

4. We are of the view that the costs of services rendered can be broken down into two main components: (1) **direct costs**, and (2) **indirect costs**. Direct costs are those directly related to the specific services provided, including labour, materials, equipment and utilities. Indirect costs, by contrast, are costs incurred that are not directly related, but are nonetheless attributable to the specific services rendered, e.g., costs of supporting labour, equipment, and office rent. (Please refer below to Figure 1: Structure of Cost of Services Rendered.) The Generally Accepted Accounting Principles (GAAP) may also be used, if necessary, as reference on the allocation of direct and indirect costs.

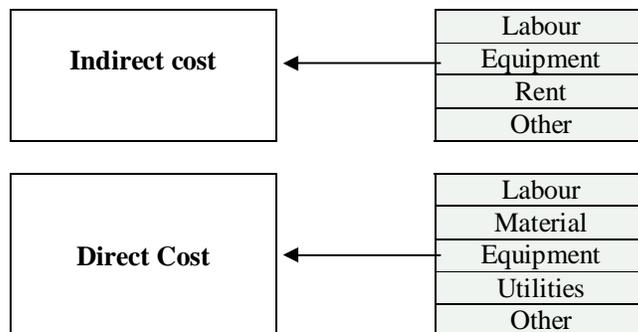


Figure 1: Structure of Cost of Services Rendered

5. To put this concept into operation, a table for analyzing relevant costs would be helpful. **Periodical reviews** of the levels of fees and charges imposed on or in connection with import and export should also be conducted, for example, at least once every three years.

III. AN EXAMPLE

6. Our "Special Cargo Examination Fee" is a useful example to illustrate how a Cost Analysis Table might be applied. The occasions on which a "Special Cargo Examination Fee" may be charged include: examinations conducted out of regular office hours, or at the special request of the applicants, or for goods not stored at customs-designated locations. Thus, special arrangements need to be made.

7. The total estimated cost of conducting a special cargo examination is made up of direct costs and indirect costs. In this particular example, the **direct costs** are the addition of the costs of the directly-related labour (inspector, chief and driver) and directly-related materials (gasoline and office supplies). To calculate the **indirect costs**, an estimate is made of the depreciation and maintenance costs of the car used partially for examination and attributable office utilities and other materials.

8. As can be seen from Figure 2: Cost Analysis Table for "Special Cargo Examination Fee" below, in this case, the estimated cost of one special examination is NT\$ 1,327.6 (equivalent to about US\$ 41). We now make a charge of NT\$ 1,300 for each Special Cargo Examination.

Total Cost: NT\$1327.6				
	Unit	Quantity	Cost/unit	Subtotal
1. Direct Cost				
a. Labour				
Inspector	hour	3	229	687
Chief's Review	hour	0.5	336	168
Driver	hour	1.5	180	270
b. Material				
Gasoline	litre	1	22.6	22.6
Office supply				30
c. Equipment				
d. Utilities				
e. Other				
2. Indirect Cost				
a. Labour				
b. Equipment				
- Depreciation and maintenance of car	hour	1.5	33	50
- Shared office utilities and materials				100
c. Rent				

Figure 2: Cost Analysis Table for "Special Cargo Examination fee"

IV. COSTS/BENEFITS AND OTHER CONCERNS

9. Our view is that the implementation by Members of the type of measures described above would be a feasible solution to the existing problem and would constitute a more scientific way of arriving at a level of fees that more fairly represent the real costs of services rendered in the context of GATT 1994 Article VIII. Furthermore, from our experience, the costs of implementing this type of system, or measure, are minimal. The first step would have to be the enactment or amendment of relevant laws and/or regulations to establish the necessary measures. This would need to be followed by training of the relevant accounting officers.

10. We would be happy to share further with interested Members and other international organizations our experience with these types of systems, and to work out details such as, implementing principles, design of a cost analysis table, S&D treatment, technical assistance and capacity building, as necessary.