

COMMUNICATION FROM HONG KONG, CHINA

The following communication, dated 26 April 2005, from the Delegation of Hong Kong, China, is being circulated in advance of the Negotiating Group meeting of 2-4 May 2005.

PROPOSAL FOR IMPROVING GATT ARTICLE VIII

I. PROPOSAL

1. Hong Kong, China proposes the following improvements to Article VIII of GATT 1994:

(a) Necessity of Trade Regulations

- (i) Members should minimise the incidence and complexity of import and export formalities and decrease and simplify import and export documentation requirements to ensure that such formalities and requirements are no more administratively burdensome or trade restrictive than absolutely necessary to achieve their legitimate objectives and are applied in an efficient manner.
- (ii) Any fees, charges, formalities or requirements referred to in Article VIII of GATT 1994 should not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the circumstances or objectives can be addressed in a less trade restrictive manner. Each Member should review its fees, charges, formalities and requirements at reasonable and regular intervals. In such a review, the concerned Member should take into account relevant new information, new business practices, and adoption of modern techniques and new technology.

II. EXPLANATION

2. Proposal (a)(i) is a step forward from the existing paragraph 1(c) of Article VIII, in which Members merely "recognise the need for" minimising the incidence and complexity of import and export formalities and decrease and simplify import and export documentation requirements. The proposal aims to put the statement into action and is cast in general terms as circumstances vary from one Member to another, and from one measure to another.

3. The proposal further establishes two benchmarks, namely

- (a) the formalities and requirements are no more administratively burdensome or trade restrictive than absolutely necessary to achieve their legitimate objectives; and

(b) they are applied in an efficient manner.

4. The first benchmark comprises a necessity test (in terms of the administrative burden brought by, and trade restrictiveness of, the measures) and a balance against reasonableness (having regard to the need for measures to achieve certain legitimate objectives, e.g., implementation of international conventions, other than those falling within exceptions already provided for under GATT) with regard to the objectives of applying the formalities and requirements. The second benchmark is to ensure that measures are applied efficiently so as to reduce transaction costs and processing time for traders, if not for the authorities.

5. Further to proposal (a)(i), proposal (a)(ii) institutes a necessity test for prevailing fees, charges, formalities and requirements referred to in Article VIII of GATT 1994. Clearly, if the circumstances or objectives giving rise to the adoption of a measure no longer exist, the measure should not be continued. Even if such circumstances or objectives still exist, the measure should not be continued if the circumstances or objectives can be addressed in a less trade restrictive manner. In this latter case, the measure may simply be abolished, or a simplified or more trade facilitating measure may be more suitable.

6. Proposal (a)(ii) further establishes a self-review mechanism for formalities and requirements. It is incumbent upon any authority to review the fees, charges, formalities and requirements under its purview at reasonable and regular intervals. It is not possible to define a rigid standard period of time for the intervals, having regard to different circumstances of different Members and measures. The proposal also sets out several key factors that should be taken into account during the reviews. Lastly, it must be emphasised that the proposed review mechanism does not affect Members' rights and obligations under the existing paragraph 2 of Article VIII.

III. IMPLEMENTATION CONCERNS

7. It is believed that the proposal does not entail substantial costs for implementation or give rise to major problems of capacity. Members having applied certain formalities and requirements, or considering to apply new ones, are in the best position and with the full capacity of analysing them and making sure that they are not overly administratively burdensome or trade restrictive.

8. It is nevertheless envisaged that some Members may not be able to review all of their formalities and requirements instantly if and when proposal (a)(ii) comes into force. A reasonable period of time may be provided to enable Members to complete the first review.
