

COMMUNICATION FROM KOREA

The following communication, dated 26 January 2005, from the Delegation of Korea, is being circulated in advance of the Negotiating Group meeting of 7 and 9 February.

**CLARIFICATION OF ARTICLE X OF THE GATT: PUBLICATION AND AVAILABILITY
OF INFORMATION AND PRIOR COMMENTING PERIOD ON CORE MEASURES**

I. INTRODUCTION

1. The purpose of this document is to provide several suggestions to improve and clarify some pertinent elements of Article X of the GATT. Improvement in transparency and predictability of trade measures allows traders to expedite trading process and minimize their transaction costs by easily obtaining relevant information such as, among others, measures related to customs and border-crossing procedures. Meanwhile, transparent measures help Member governments to reduce unnecessary frictions with traders. Consequently, improvement in transparency will not only increase the flow of international trade but also the Member governments will benefit by saving its administrative cost and increasing the possibility of effective enforcement of the trade-related measures.

2. Although most suggestions in this document come from previous suggestions that Korea and other Members have made, Korea wishes to further develop these suggestions to clarify Article X and to reemphasize the significant role they can play in facilitating trade. Also, Members are already familiar with the basic idea of the following suggestions since the following suggestions are comparable with the transparency requirement in other WTO Agreements, especially the TBT and SPS Agreements, which pertains to publication and notification of its relevant regulations, respectively.

3. The structure of this document is divided into two sections: suggestions and implementation concerns. In the suggestions, Korea proposes recommendations in the following four areas:

- publication of information;
- notification and prior commenting period on core measures;
- interval between publication and implementation; and
- single national focal point.

4. The second section focuses on implementation concerns of the aforesaid suggestions in light of developing countries with a particular emphasis on S&D.

II. SUGGESTIONS

A. PUBLICATION OF INFORMATION

5. It is necessary to make information on measures related to customs and border-crossing procedures widely available and easily accessible to improve transparency in trade regulations. In this regard, Korea proposes the following:

- Members publish the laws, regulations, judicial decisions, administrative rulings as defined in Article X.1 of the GATT, and advance rulings of general application and a binding nature, as well as any agreements with other Member or Members relating to the relevant regulations or laws;
- this information should be widely available and in a non-discriminatory fashion, at no cost or cost,¹ through widely accessible means;² and
- Members are required to make any exceptions, derogations, or changes to the items listed above readily available, non-discriminately at no cost or cost. Notice of changes must be given in advance to allow other Members and interested parties to take notice.

6. To enhance the efficiency of obtaining the necessary information, Korea proposes that Members notify the WTO Secretariat of the media through which the aforementioned measures and their amendment are published, and the Secretariat disseminate this notice to other Members as well as interested parties.³ The media used by Members for publication should be widely accessible, i.e., an internet website can be used as a media. This notification of media should allow traders to have the means to access the most updated information on the measures, while imposing a minimum burden on the Member.

B. NOTIFICATION AND PRIOR COMMENTING PERIOD ON CORE MEASURES

7. When Members introduce or amend "core measures" that may have a significant effect on trade of other Members, we can greatly improve transparency of these measures by notifying interested parties of the proposed introduction or amendment of core measures at the earliest possible stage and by providing them with an opportunity to submit comments before finalizing the proposed measures. Providing commenting period on core measures helps interested parties to avoid possible problems⁴ and related costs, and it should also reduce the possibility of any future disputes concerning the measures in question.

8. To promote notification and prior commenting period on core measures, Korea proposes that Members notify the Secretariat of proposed core measures and their amendment at an early appropriate stage. The Secretariat should disseminate this information to interested parties. Interested parties should be provided with the opportunity to make comments in writing on the aforesaid

¹ If any fees are charged for providing information (including revised information or any relevant exception to the information), such cost should be minimal and commensurate with the cost of service rendered.

² Widely accessible refers to, for example, official gazette or an internet website.

³ A requirement to inform the Secretariat and other Members of the media where changes in laws and regulations are announced is utilized in the plurilateral WTO Agreement on Government Procurement, Article XIX and Appendix IV. Note that the suggestion in the text is a somewhat weaker provision than the provision in Articles 5 and 10 of the TBT Agreement, which requires all Members to notify the Secretariat when introducing a technical recommendation or a conformity assessment procedure which is not in accordance with international standards, and the Secretariat to disseminate all such notifications to other Members.

⁴ Possible problems could be, for example, a delay in customs clearance because of a change in customs measures.

proposed measures, followed by the Members giving due consideration to these comments. Similar provisions can also be found in the TBT and SPS Agreements.⁵

C. INTERVAL BETWEEN PUBLICATION AND IMPLEMENTATION

9. Providing a reasonable amount of time period between publication of new or amended measures and their implementation is necessary to render fair opportunity to all traders to smoothly adjust to new trading measures and overall, to enhance predictability for traders. For this reason, Korea proposes the following measures:

- unless advanced notice is precluded or not practical, Members allow a reasonable amount of time between publication of new or amended measures and their entry into force;
- if desirable, Members may go even further to specify the time period; and
- in case of extraordinary circumstances, for instance, imminent threats to national security and health, such time interval may be reduced or omitted.⁶

D. SINGLE NATIONAL FOCAL POINT ("SNFP")

10. Several Members have proposed the establishment of single window inquiry points or contact desks that would respond to inquiries by Members and interested parties regarding customs and border-crossing procedures. In particular, Korea proposes an establishment of an SNFP as a centre to communicate with the other domestic competent authorities to more efficiently respond to the inquiries on a non-discriminatory basis. The SNFP should, within a reasonable period of time, supply not only the information requested but also any other pertinent information, which, SNFP consider, the interested parties should be aware. In addition, the contact information relating to the SNFP should be notified to the WTO Secretariat. The Secretariat should make such information available to the other Members and interested parties.⁷

11. The SNFP contributes to trade facilitation by reducing the time and costs of obtaining necessary information and improving the accessibility of information by private traders, especially, among others, small- and medium-sized businesses. Furthermore, implementation of this measure is not likely to be difficult because each government merely requires designating an office to receive and answer inquiries by finding the relevant government agency or other authorities that are responsible for the inquiry, obtaining the information and delivering the information directly to the inquirer.

III. IMPLEMENTATION CONCERNS

12. The above proposals, if adopted, would benefit both the developed and the developing countries, and since they are relatively easy to implement, their implementation costs would be rather small. Nevertheless, considering that some developing countries, especially LDCs, may lack resources to implement the above proposals, more favourable treatment should be given to developing countries. In particular, upon request, more flexibility in implementing the suggestions in this document could be provided to developing countries, for instance:

⁵ Refer to Articles 2.9 and 2.10 of the TBT Agreement and Annex B Articles 5 and 6 of the SPS Agreement.

⁶ Note that similar provision has been introduced to other WTO agreements such as Articles 2.12 of the TBT Agreement and Annex B Article 2 of the SPS Agreement. However, these articles merely state a requirement for a reasonable time interval, without specifying how long that interval should be.

⁷ Refer to Articles 10.1, 10.2, and 10.3 of the TBT Agreement and Annex B Articles 3 and 4 of the SPS Agreement.

- longer time period is furnished for:
 - fulfilling the requirement of notification and prior commenting period on core measures and their amendment;
 - notification of core measures and their amendment, if any, to the Secretariat;
 - establishing the SNFP; and
 - delivery of the information requested via the SNFP.
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