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Negotiating Group on Trade Facilitation

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

The following communication, dated 26 January 2005, from the Delegations of Japan, Mongolia, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, is being circulated in advance of the Negotiating Group meeting of 7 and 9 February.

TRADE FACILITATION: PROPOSALS TO CLARIFY AND IMPROVE GATT ARTICLE X

I. INTRODUCTION

1. To further expedite the movement, release and clearance of goods based on Annex D of the July Package, it is essential to ensure transparency and predictability of trade regulations, and to establish a regime for their impartial administration.
2. Enhanced transparency, predictability and impartiality for trade regulations (including laws, regulations, judicial decisions and administrative rulings) would allow traders to obtain accurate and timely information on trade procedures, which would avoid unnecessary documentation and unnecessary procedures, thus reducing their logistical costs and time. This would lead to increased business opportunities, especially for small and medium sized enterprises (SMEs) which have so far missed the opportunity to engage in international trade. Also, for trade-related governmental authorities in Members, facilitated trade procedures would enable the more efficient allocation of human and financial resources, and bring them an increase in both trade volume and customs duties. In addition, an overall trust in the trade system is a fundamental incentive for fostering further trade transactions and this would bring economic development through expansion of trade and foreign direct investment. Accordingly, ensuring transparency, predictability and impartiality under the GATT principle of non-discrimination would bring benefits to all the parties involved in trade, both developing and developed Members, importing and exporting Members, private and public sectors, and large enterprises and SMEs alike.
3. In order to contribute to the negotiations on trade facilitation, this proposal aims at further clarification and an improvement of GATT Article X, which stipulates the publication and administration of trade regulations. In making this proposal, we first categorized the principles for trade facilitation included in Article X into three principles, i.e. transparency, predictability, and impartiality. Then, under each of these three principles, a specific example of problems pointed out by the private sector is presented together with possible elements of solutions and examples of implementing these elements, without prejudice to their nature in the final result of the negotiations. Proposals on special and differential treatment (such as the granting of transition periods, etc.), technical assistance and support for capacity building, and cost implications of proposed measures,

which are also important elements for the negotiations as agreed by Members in Annex D of the July Package, will be appropriately addressed during the course of the negotiation process.

4. The following proposals are not exhaustive and are organized to facilitate Members' understanding of the basic obligations, problems and solutions related to GATT Article X. Each Member of this proposal reserves the right to make further proposals on this subject in the future.

II. TRANSPARENCY

A. EXAMPLE

Unpublished trade regulations

Company A in Member X is planning to export their products to Member Y. However, they found out that detailed information on trade procedures is not stipulated in Member Y's published trade regulations. Administrative guidelines stipulating detailed regulations for trade procedures are not published as they were treated as internal information within the government of Member Y.

5. In this case, SMEs, especially in developing and least developed Members trying to engage in international trade for the first time, would lose the opportunity to enter new markets and their business opportunities would be unduly restricted if the relevant regulations on trade procedures were not published in the exporting Members and prospective markets.

B. POSSIBLE ELEMENTS OF SOLUTIONS

6. If trade-related regulations were not published, it would be difficult for traders to anticipate the necessary procedures for engaging in trade. While GATT Article X.1 obliges Members to publish trade-related regulations promptly, it does not provide a detailed scope of information to be publicized or the means to publicize it. Improvement and clarification of the above-mentioned points is necessary to make GATT Article X more effective in its implementation.

7. It is worth mentioning that, other than the 1994 GATT, Article III of the GATS, other WTO agreements also stipulate provisions related to transparency. Furthermore, for example, "Disciplines on Domestic regulation in the accountancy sector (S/L/64)" provides details to achieve transparency on the basis of articles of the GATS. These provisions could serve as a reference for discussion on trade facilitation.

8. The following are possible elements to solve the above-mentioned problems:

1. Clarification and improvement of the scope of trade regulations to be publicized

9. The examples of trade regulations to be publicized are:

- All trade-related laws and regulations (including trade-related treaties and agreements)
- Procedures and administrative rules of border agencies (including documentation formats)
- Applied tariff rates
- Decisions and examples of customs classification

- Fees and charges imposed on or in connection with importation or exportation (To ban the collection of the unpublicized fees and charges is one possible idea)
- Details of service contracts between PSI entities and governments
- Details of export inspection for safety standards, etc.
- Standard processing period for major trade procedures

10. Relevant governments and traders could obtain the following information from the competent border agencies:

- Legitimate purpose or objective in imposing trade-related restrictions
- Reasons for any delay in cases where trade-related procedures take longer than the standard processing period

2. Clarification and improvement of methods of publication

11. The following are possible methods of publication:

- Notices in government gazettes
- Publication on the official website of any competent government or governmental agency
- Publication of a summary (complete translation if possible) of trade regulations in more than one of the official WTO languages on the website (a transition period would be permitted for Members whose mother tongue is not one of the WTO official languages)

3. Notification to the WTO of trade-related regulations

12. To ensure transparency, notification to the WTO of each Member's trade regulations in one of the WTO official languages may be an option.

- Establishment of a committee in the WTO to process the notification (c.f. Agreement of Import Licensing Procedures, Article 4)
- Publication of notification on the WTO website (the WTO secretariat or other international organizations (UNCTAD, ITC etc.) could provide translation services, especially for LDCs that have difficulties in publicizing their trade regulations on their websites.)

4. Establishment of inquiry points

13. Establishment of inquiry points would be a useful tool to improve the accessibility of trade-related information to traders. The establishment of an advance ruling system that would enable traders to obtain and confirm necessary information beforehand is vital for promoting trade facilitation.

- Establishment of inquiry points responsible for providing relevant information or documents related to trade procedures to the traders (including co-ordination among existing inquiry points of each border authority) (c.f. TBT Agreement Articles 10.1 and 10.2)
- Establishment of an advance ruling system (c.f. Agreement on Rules of Origin Article 2 (h))

III. PREDICTABILITY

A. EXAMPLE

Sudden change in laws and regulations

Trading company A in Member X mainly exports goods to Member Y. In Member Y, trade-related laws and regulations are suddenly revised and many trade restrictions are not included in the laws and regulations. Therefore company A has to spend unnecessary additional time confirming the required trade procedures, making it difficult to deliver its products by the deadline due to delayed cargo release

14. As this case indicates, if laws and regulations were suddenly revised or if the revision were not published before its implementation, companies would not have enough preparation time to comply with the revised regulations appropriately. In particular, due to the lack of human or financial resources to adjust and manage these sudden changes, it would be particularly difficult for SMEs to maintain a stable business environment in these Member countries. In such a situation where it is difficult for traders to comply with revised trade regulations, it would also hinder the adequate and effective administration of these regulations for the government or a governmental agency concerned.

B. POSSIBLE ELEMENTS OF SOLUTIONS

15. In order to solve the above-mentioned problems, it is necessary to provide sufficient preparation or adjustment periods for traders who have to comply with the revised trade-related regulations. Possible elements, through clarification and improvement of the definitions and understanding of GATT Article X, for ensuring the preparation and adjustment period for traders are as follows:

1. Publication of trade-related laws and regulations before implementation

- Providing opportunities for interested parties including the private sector to comment on prospective trade-related laws and regulations
- Publication of laws and regulations (or final draft regulations) before their implementation
- Publication of the legislative purpose of the prospective trade-related laws and regulations

2. Confirmation of trade-related decisions before any trade transactions

- Development of advance ruling system

3. Explicitly stating trade procedures

- Explicitly stating the required trade procedures in the relevant laws and regulations

IV. IMPARTIALITY

A. EXAMPLES

Partial administration of trade regulations

In Member X, the criteria for customs classification are imprecise, allowing the discretion of each official. Tariff rates and the processing time for goods and trade-related procedures are operated differently by each local customs due to the priority of local rules over national rules. In addition, since an appropriate appeal system has not been established in Member X, traders have no choice but to accept the decisions of each local customs.

16. As this example indicates, different customs classification of the same product, especially in cases where the tariff rates are different, would generate additional costs for traders, which would be of great concern, especially for SMEs. Furthermore, in cases where customs classification and applied tariff rates differ among various importers who import the same products, this would lead to unfair price competition in the market, leaving some importers in an unfair position. By solving such problems pertaining to unfair administration of trade regulations, governments are able to avoid an unnecessary cost burden on traders and would contribute to improved duty collection by governments. In addition, if an appropriate appeal system is not established whereby importers can appeal to the government in the event of unfair administration, traders may lose their trust in the trade procedural system itself, thereby discouraging the expansion of trade transactions in the Member countries and allowing for a loss of economic development opportunities. Therefore it is vital to develop appropriate legal appeal systems together with securing impartial administration of trade regulations.

B. POSSIBLE ELEMENTS OF SOLUTIONS

17. Ensuring the impartial administration of trade regulations would expedite trade-related procedures through a more efficient allocation of resources within the government or a governmental agency and would gain traders' trust towards each Member's trade system, which would lead to a greater incentive for expanding trade and the economic development of all WTO members.

18. With a view to realizing such merits, the aspects of GATT Article X that are of relevance to impartiality should be clarified and improved through the following examples of measures to enhance impartial administration of trade regulations:

1. Uniform administration of trade regulations throughout the Member's territories

19. Ensuring uniform administration of trade regulations throughout the Member's territories is essential to enhance the impartiality of trade procedures.

- Establishment of a central function within the government which has the primary responsibility to interpret trade regulations such as those relating to customs classification or customs valuation, etc.
- Compilation and distribution of casebooks of cases and examples of customs classification and customs valuation

- Provision of staff training based on casebooks on customs classification and customs valuation

2. Establishment of appeal system

20. The establishment of an appeal system as a relief measure for traders against unfair administration of trade-related procedures is crucial for traders to appropriately recover damages caused by such actions.

- Establishment of a complaints desk
- Development of legal and administrative appeal systems for lodging objections
- Publication of major judicial and administrative decisions against lodged appeals

3. Maintenance of integrity among officials

21. The awareness of officials in charge of administering trade regulations is of great importance for impartial administration and it is necessary to maintain a high level of integrity among officials.

- Development of codes of conduct for staff of border agencies
 - Appointment of officials in charge of providing officials' education and provisions of adequate training to relevant officials
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