

WORLD TRADE ORGANIZATION

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Negotiating Group on Trade Facilitation

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COMMUNICATION FROM JAPAN AND MONGOLIA

The following communication, dated 10 March 2005, from the Delegations of Japan and Mongolia, is being circulated in advance of the Negotiating Group meeting of 22-24 March.

TRADE FACILITATION: PROPOSALS TO CLARIFY AND IMPROVE GATT ARTICLE VIII

I. INTRODUCTION

1. This proposal aims to clarify and improve GATT Article VIII with a view to further expediting the movement, release and clearance of goods based on Annex D of the July Package. In short, GATT Article VIII refers to the following:

- (a) Fees and charges imposed on or in connection with importation or exportation;
- (b) Import and export formalities, import and export documentation requirements;
- (c) Review of the operation of Member's laws and regulations upon request by another Member;
- (d) Substantial penalties for minor breaches; and
- (e) Scope of fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation that are subject to the provisions mentioned above.

2. Among these categories, this paper addresses items of concern to the private sector to facilitate the Members' understanding of the substance of Article VIII, by introducing specific examples of problems and proposing solutions. Ensuring the proposed measures based on the principle of non-discrimination would reduce the costs for traders and expand trade, thus contributing to the economic development of all Members. Regarding the cost implication of introducing the proposed measures, several national experiences show that most of these measures could be implemented by using the existing facilities and resources of each Member with minimum costs for legislation and training of officials. We believe benefit of introducing the measures far outweighs the cost of introduction.

3. The following proposals are not exhaustive and are organized to facilitate Members' understanding of GATT Article VIII, and we reserve the right to make further proposals on this subject in the future.

II. FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION

A. EXAMPLES

Fees and charges imposed on or in connection with importation and exportation

In Member X, excessive fees and charges compared to the value of the service provided are imposed, generating unnecessary cost for traders. Furthermore, unpublicized fees are required for import and export declarations outside office hours.

4. If unpublished fees and charges were required, traders, especially small- and medium-sized enterprises (SMEs) trying to trade with X for the first time, would face unpredictable costs that would restrict their business chances. Furthermore, if published fees and charges were not limited to the approximate cost of services rendered, they would impede international trade flows.

B. ELEMENTS OF SOLUTIONS

5. To cope with such problems and set appropriate fees and charges imposed on or in connection with importation or exportation, and to reduce the number and diversity of such fees and charges, we propose the introduction of the following measures:

- Periodic review of fees and charges

Periodic review of the appropriateness of the amount and the number of fees and charges imposed on or in connection with importation and exportation.

- Publication of fees and charges

Publication of fees and charges imposed on or in connection with importation or exportation and prohibiting the collection of unpublicized fees and charges.

III. IMPORT AND EXPORT FORMALITIES/IMPORT AND EXPORT DOCUMENTATION REQUIREMENTS

A. EXAMPLES

Import and export formalities/documentation requirements

In Member Y, many complex documents are required for customs clearance, incurring tremendous time and effort. Furthermore, customs duty refund procedures in case of re-exportation are complicated and refunds are often delayed. Government agencies tend to return documents required to conduct other procedures to traders with delay, disrupting the progress of other procedures. Conformity assessment and other related procedures are complex and differ greatly from internationally recognized procedures. In addition, goods are always subject to physical inspection even if the company maintains a high level of compliance.

6. The private sector has often complained of problems relating to import and export formalities and documentation requirements. Such problems make import and export formalities unnecessarily complex, and impose unnecessary costs on traders, especially SMEs trying to trade with Y for the first time, thus curbing their opportunities to enter new markets. For the Government Y too, unnecessarily complex import and export formalities hinder the efficient allocation of limited human and financial resources, thereby deterring economic development opportunities through the expansion of trade.

B. ELEMENTS OF SOLUTIONS

7. Solving these problems and simplifying import and export formalities and import and export documentation requirements within the scope of Members' legitimate policy objectives would contribute to Members' economic development through the expansion of trade. To achieve this goal, we propose the introduction of the following measures:

1. Import and export formalities

- Least trade restrictive import and export formalities and a periodic review

*Limit import and export formalities to the least trade restrictiveness level, with a view to minimizing the incidence and complexity of import and export formalities.
Periodically review import and export formalities, based on comments from the private sectors and other parties.*

- Use of international standards

Use of international standards to the extent possible, where other relevant international organizations already have set up international standards, with a view to minimizing the incidence and complexity of import and export formalities.

As noted in Paragraph 9 of Annex D of the July Package, it is important to take due account of the relevant work of other relevant international organizations in the area of trade facilitation.

- Documentary examination and physical inspection without delay

Conduct examination and inspection after receiving application without delay as well as take other relevant actions including returning necessary documents to traders without delay, with a view to further expedite the movement of goods.

- Pre-arrival documentary examination

Introduction of procedures for accepting and examining documents prior to the arrival of goods, with a view to further expedite import and export formalities.

- Risk management and authorized traders

*Conduct examination and inspection based on risk management.
One example is to introduce simplified import and export formalities for authorized traders which have high level of compliance with trade related laws and regulations.*

Introducing risk management is necessary for facilitating the trade while ensuring regulatory control at boarder simultaneously and for achieving the right balance between them. Risk management would enable governments to allocate human and financial resources efficiently and traders, especially those with high level of compliance, to reduce the cost and time spent on trade procedures.

- One-time submission of import or export documentation to one agency

Introduction of procedures for allowing one-time submission of import or export documentation to one authority, with a view to eliminating the inefficiency of submitting similar information to multiple authorities (including coordinating the

timing and place of physical inspections among the relevant authorities to the extent possible).

2. Import and export documentation requirements

- Least trade restrictive import and export documentation requirements and a periodic review

Limit import and export documentation requirements to the least trade restrictive level, with a view to decreasing and simplifying such requirements. Periodically review import and export documentation requirements, based on comments from the private sector and other parties.

- Use of international standards

Use of international standards to the extent possible, where other relevant international organizations already have set up international standards, with a view to decreasing and simplifying import and export documentation requirements.

As noted in Paragraph 9 of Annex D of the July Package, it is important to take due account of the relevant work of other relevant international organizations in the area of trade facilitation.

- Acceptance of copies

Acceptance of required documents in copies to the extent possible, with a view to reducing the time and costs to meet the requirement for originals for import and export documentation, especially in cases where multiple authorities are involved or where documents are required to conduct other procedures.

- Acceptance of a single documentary submission

Acceptance of single documentary submission of import or export documentation requirements in cases of repeated transactions of same products; Exemption of documentary submissions for each importation or exportation should be permitted.

IV. SUBSTANTIAL PENALTIES FOR MINOR BREACHES

A. EXAMPLES

Substantial penalties for minor breaches

In Member Z, a minor mistake in documentation can result in a rejection by the authority. Furthermore, as officials are compensated according to the amount of penalties, they tend to treat minor breaches as a significant issue and force traders to pay penalties.

8. If a mistake in documentation could be corrected immediately by the trader at application desk without hindering legitimate policy objectives of the authority, then rejection of documentation due to such mistakes would impose unnecessary costs to traders. Furthermore, if the kinds of penalties were not publicized, then it would allow for the discretion of each official to the disadvantage of traders, especially SMEs. This practice is of great concern not only in terms of transparency, predictability and impartiality, as noted in TN/TF/W/8, but also the credibility of the Members' trading system itself.

B. ELEMENTS OF SOLUTIONS

9. By solving such problems, the legal stability for traders and overall trust in Members' trading system could be improved, providing greater incentives for the expansion of trade and leading to the economic development of Members. To achieve this goal, we propose the introduction of the following measures:

- Clearly stating and publicizing penalty provisions

Clearly stating and publicizing penalty provisions against breaches of import and export formalities in relevant laws and regulations. Prohibiting the imposition of unpublished penalties.

- Explaining of the reason of rejection of documents

Explaining why the authority rejects the submitted documents at the application desk.

V. CONSIDERATION OF DEVELOPING MEMBERS' CONCERNS

10. Special and differential treatment, technical assistance and support for capacity building, and cost implications of proposed measures are also important elements for the negotiations as agreed by Members in Annex D of the July Package. For the measures proposed above, granting a transition period in accordance with developing Members' implementation capacity or support/assistance based on coordination among relevant international organizations (IMF, OECD, UNCTAD, WCO and World Bank) may be taken into consideration. In addition, providing opportunities to consult the implementation capacities of developing Members together with experts from relevant international organizations may be useful measures for Members to consider.
