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MARKET ACCESS FOR NON-AGRICULTURAL PRODUCTS

Negotiating Proposal on Export Taxes

Communication from the European Communities

Addendum

The following communication, dated 20 April 2006, is being circulated at the request of the delegation of the European Communities.

I. GENERAL REMARKS

In line with paragraph 16 of the Work Programme adopted at the WTO Ministerial Conference in Doha in November 2001, and paragraph 22 of the decision at the WTO Ministerial Conference in Hong Kong in December 2005, the European Communities (hereafter "the EC") hereby submits its specific negotiating proposal on export taxes.

Since its initial submission on 1 April 2003 (TN/MA/W/11/Add.3), the EC has raised, notified and provided revised notifications on export taxes to the Negotiating Group on Market Access (NGMA) with the view to prepare for the non-tariff barriers' negotiations on market access for non-agricultural products in line with the mandate agreed among WTO Members in Doha. Moreover, during the course of 2005, the EC hosted three informal meetings on export taxes, allowing for an open and more detailed exchange of views both among WTO Members at different levels of development, and between current groups of users of export taxes and the majority of Members that do not impose taxes on the exportation of goods. A summary of these informal meetings is contained in JOB(05)/321.

The specific EC negotiating proposal aims to address distortions to international trade caused by those export taxes used for the purpose of (or otherwise having the effect of):

- artificially transferring gains from trade between WTO Members (beggar thy neighbour);
- creating unfair advantages to domestic industries involved in international trade at the expense of other WTO Members' producers, including infant industries in developing countries; or
- evading existing WTO disciplines on export restrictions by shifting to more or less prohibitive taxes on the exportation of goods.

The EC proposal has been carefully drafted so as to discipline the use of export taxes to the detriment of other WTO Members while not affecting the right to introduce export taxes for legitimate purposes in line with the current WTO rules (notably GATT Article XX). In addition, in relation to present WTO rules applicable to export restrictions, the EC proposal confirms that WTO Members, and in particular developing countries, may resort to export taxes by reference to GATT Article XVIII

on governmental assistance to economic development and GATT Article XII on safeguarding the balance of payment. Moreover, the proposal provides additional flexibility for developing countries, and especially least-developed countries, by allowing the possibility for these countries to maintain export taxes on a permanent basis for a limited number of products, and at generally low levels, where complete elimination may not be feasible and the measures are not used for any of the purposes listed above.

Thereby, the EC proposal on export taxes is in accordance with the mandate agreed among WTO Members to reduce or as appropriate eliminate non-tariff barriers in the negotiations on market access for non-agricultural products (NAMA), taking fully into account the special needs and interests of developing and least-developed country participants.

II. PARAMETERS FOR MULTILATERAL DISCIPLINES ON EXPORT TAXES

The EC proposal establishes disciplines in the form of a new *WTO Agreement on Export Taxes*. It thus follows the horizontal approach recognized in paragraph 22 of the Hong Kong Ministerial Decision. The coverage under the Agreement is all non-agricultural products in accordance with paragraph 16 of the Work Programme of the Doha Ministerial Decision.

The specific disciplines in the EC proposal on export taxes cover:

(1) Commitment to eliminate export taxes by all WTO Members, with the possibility for developing and least-developed countries to maintain certain export taxes, based on positive listing, to be included in these Members' lists of Schedules;
(2) Commitment to provide most-favoured nation treatment in case of any remaining export taxes and bind the maximum levels of taxes levied on exports in the lists of Schedules;
(3) Clarification of the possibility of all WTO Members to impose fees and charges on exports in accordance with GATT Article VIII;
(4) Confirmation of the possibility for all WTO Members to use of export taxes under specific circumstances (in addition to possible exceptions from the commitment to eliminate export taxes provided exclusively for developing countries) in accordance with GATT Article XII, XVIII, XX and XXI;
(5) Clarification of applicable rules with respect to customs valuation of products in connection with exportation;
(6) Transparency requirements;
(7) Clarification of applicable rules with respect to any future modification of Members' lists of schedules;
(8) Review clause; and
(9) Dispute settlement according to the provisions of the GATT and the DSU.

III. NEGOTIATIONS OF POSSIBLE EXCEPTIONS

Regarding the possible lists of exceptions from the commitment to eliminate export taxes (other than the ones referred to in GATT Article XII, XVIII, XX and XXI), the EC considers that these should be negotiated according to the following parameters:

- Developed countries: no exceptions for the use of export taxes;
- Developing countries: export taxes of maximum [X] percent for a limited set of products to be determined through request and offer and taking into account the potential trade-distortive effects of these export taxes on other Members; and
- Least developed countries: binding of existing export taxes and listing of export taxes of maximum [Y] percent on a set of products for which countries currently apply no taxes but

may want to retain flexibility of introducing export taxes in the future, to be determined on the basis of these countries' expressed development needs and possible fiscal constraints.[1]

[1] Where Y>X and the level of X, for negotiating purposes, takes into account the effective rate of protection caused by any remaining tariff escalation or high tariffs in key importing countries following the application of the formula.

ANNEX

WTO Agreement on Export Taxes – Core Disciplines

Article 1

No duties, taxes and other charges imposed on or in connection with the exportation of non-agricultural goods[2] (hereinafter referred to as "export taxes") destined for the territory of any other Member, as well as internal taxes and other charges on products exported to any other Member that are in excess of those imposed on like products destined for internal sale, shall be instituted or maintained by any WTO Member.

Article 2

Notwithstanding Article 1 of this Agreement, developing country Members and especially least-developed country Members may maintain export taxes under the conditions set out in Article 3, provided that such export taxes and their maximum levels are listed in Members' schedules of commitments.

Article 3

1. Export taxes may be maintained and listed in Members' schedules for a limited number of products, at low levels and only in so far as:

a) they are necessary, in conjunction with domestic measures, to maintain financial stability, to satisfy fiscal needs, or to facilitate economic diversification and avoid excessive dependence on the export of primary products; and
b) they do not adversely affect international trade by limiting the availability of goods to WTO Members in general or by raising world market prices of any goods beyond the prices that would prevail in the absence of such measures, or otherwise cause serious prejudice to the interests of developing country Members.

2. Members confirm the applicability of Article I of the GATT 1994 to the measures covered in Article 2 of this Agreement.

Article 4

1. The prohibition and, where relevant, reduction of export taxes shall take effect upon the entry into force of this Agreement for developed Members, no later than 3 years after its entry into force for developing Members and no later than 5 years after its entry into force for least-developed Members.

2. Commitments to eliminate and reduce existing export taxes shall be implemented through equal annual reductions for all relevant non-agricultural goods.

3. No new export taxes may be introduced during the transition periods.

Article 5

Nothing in this Agreement shall prevent:

a) any Member from imposing fees and charges on or in connection with the exportation of goods in accordance with GATT Article VIII;

[2] Same product coverage as for NAMA in DDA.

b) any Member from applying export taxes in accordance with the rules applicable under GATT Article XX (General Exceptions) and Article XXI (Security Exceptions); and
c) any Member, and especially developing Members and least-developed Members, from temporarily and under specific circumstances adopting measures including export taxes in accordance with the conditions, rules and procedures of the following Articles, where applicable:
    - GATT Article XII on Restrictions to Safeguard the Balance of Payments;
    - GATT Article XV:9 on Exchange Arrangements; and
    - GATT Article XVIII on Governmental Assistance to Economic Development.

Article 6

Export taxes instituted or maintained by Members in accordance with Articles 2, 3, 5(b) and 5(c) of this Agreement shall be applied in accordance with GATT Article VII.

Article 7

Members reaffirm, with respect to export taxes, their commitment to obligations on transparency and notification in Article X of GATT 1994 and in the Ministerial Decision on Notification Procedures adopted on 15 April 1994. Any new export taxes and any increase in existing export taxes must be notified to the WTO Secretariat 60 days before their entry into force. The notification shall contain a detailed description of the export taxes in question, their product and trade coverage, and their applied levels. Upon request, the Member seeking to institute new or raise existing export taxes shall afford adequate and prompt opportunity for consultations and provide information on the reasons for the export taxes, on their potential effects and on other matters of interest or concern to any other Member. The Member shall also allow a reasonable interval between the adoption of the measure instituting new or raising existing export taxes and its entry into force.

Article 8

The provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding, shall apply to consultations and the settlement of disputes under this Agreement.

Article 9

GATT Article XXVIII and the Understanding on the Implementation of Article XXVIII of GATT 1994 shall apply *mutatis mutandis* to the modification of a schedule within the meaning of Article 2.

Article 10

No later than 5 years after the entry into force of this Agreement, Members shall begin negotiations with the aim of gradually phasing out all remaining export taxes listed in Members' schedules. Priority should be given to those export taxes of concern to developing countries and particularly least developed countries.

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