

**COMMUNICATION FROM THE EUROPEAN COMMUNITY
AND ITS MEMBER STATES**

The following communication, dated 24 January 2005, from the Delegation of the European Commission, is being circulated in advance of the Negotiating Group meeting of 7 and 9 February.

**CLARIFICATIONS AND IMPROVEMENTS TO GATT ARTICLE X
("PUBLICATION AND ADMINISTRATION OF TRADE REGULATIONS")**

1. This document is a first EC contribution to the Negotiating Group on Trade Facilitation. The document proposes a number of clarifications and improvements to GATT Article X to achieve greater transparency and better administration of regulations affecting border crossing trade. The proposals if adopted will help reduce the amounts of time and money that are wasted because of unclear and outdated customs and border procedures. They will result in a more transparent and predictable trading environment for companies, especially small ones, and result in cost savings for governments. The potential gains for all Members, both developed and developing, are high. The proposals made below take up ideas suggested by Members in the previous work of the Council on Trade in Goods, priorities of the business community (including small- and medium-sized enterprises – SME's), and non-tariff barriers notified by Members in the NAMA negotiations. The proposals are modelled on provisions that exist in other WTO Agreements, and are thus familiar to Members. The EC plans to follow up this contribution with further submissions on GATT Article VIII, GATT Article V and technical assistance and development issues.

A. PUBLICATION AND AVAILABILITY OF INFORMATION

2. The publication and ready availability of information on customs laws and procedures, and other rules affecting imports, exports and goods in transit is necessary to assist traders in day-to-day management of their transactions. It also encourages a co-operative relationship between the trading community and customs and other public administrations. In the light of this, the EC proposes the following clarification and improvement of GATT Article X:

1. *A provision requiring Members to publish and make easily available, on a non-discriminatory basis, the following measures and information to any interested parties:*
 - *All relevant laws, regulations, administrative guidelines, decisions and rulings of or having general application;*

- *Information on customs and other border-related agency processes (including port, airport and other entry-point procedures and relevant forms and documents);*
 - *Conditions for different forms of customs treatment;*
 - *Appeal procedures (including standard times and conditions for appeal);*
 - *All fees and charges applicable to import, export and transit procedures and requirements;*
 - *Agreements with any other country or countries relating to the above issues;*
 - *Customs' and other government agencies' management plans relating to implementation of WTO commitments. This could include standard processing times or relevant reform and modernisation programmes;*
 - *All significant amendments to the above.*
2. *To help ensure the ready availability of the above information, there should be an officially designated medium, and where feasible and possible, access to the information on-line. Information should be presented in a simple and accessible manner.*
3. *The EC supports a requirement to establish enquiry points or trade desks, providing information on all the above measures and information, for use of governments and traders on a non-discriminatory basis. Such provisions could be based on provisions on enquiry points in certain WTO Agreements such as TBT and SPS.*

B. PRIOR CONSULTATION ON NEW AND AMENDED RULES AND TIME PERIODS BEFORE ENTRY INTO FORCE

3. Trust and cooperation between governmental bodies involved in cross-border trade and the trading community is a vital element of both trade facilitation and better controls. Prior consultation on new or amended rules and procedures is useful both for administrations and traders in order to ensure predictability and good regulation, including the avoidance of unnecessary barriers to trade, and encourages compliance by traders. Early consultation with affected traders also helps governments to avoid mistakes, or to introduce excessive regulation not tailored to business needs, and this will tend to save money for governments and business alike. Prior consultation has proven a very useful feature of other WTO Agreements. The EC therefore proposes the following improvements to Article X:

4. *A provision requiring consultation between interested parties, notably governments and the private sector, on proposed new rules and procedures applied to import and export administration and goods in transit. Such a consultation requirement could include the establishment of a regular consultative mechanism on rules and procedures with representative private sector bodies including importers, exporters, carriers, chambers of commerce, etc.*

5. *There should be adequate time periods for comment on proposed rules and procedures. A minimum period could be agreed subject to an exception where urgent problems arise or threaten to arise. The consultation should also take place at a stage where comments can be discussed and taken into account. There should also be an adequate time period between the publication of rules and their implementation.*
6. *Notice of proposed rules and procedures on which comments are invited should be accompanied by a statement of the policy objectives sought, etc.*

C. APPEAL PROCEDURES AND DUE PROCESS

4. The clarification of GATT Article X concerning the right of appeal against customs and other agency rulings can facilitate trade and help ensure the effective implementation of rules and procedures. Administrative appeal procedures can deliver solutions for traders more rapidly than if they have to use courts, and for administrations are a much cheaper alternative to courts. A good example of how trade facilitation also reduces costs for governments.

5. Specifically, the EC proposes that all Members would adopt the following procedures (which many have in place already):

7. *For imports, exports and goods in transit, there should be an obligation to provide a non discriminatory, legal right of appeal against customs and other agency rulings and decisions, initially within the same agency or other body, and subsequently to a separate judicial or administrative body. A standard time should be set for resolution of minor appeals at administrative level. Procedures for appeal should be easily accessible, including to SME's, and costs should be reasonable and commensurate with costs in providing for appeals. Companies should have the right to be represented at all stages of appeal procedures by an agent or legal representative – a request of small companies.*
8. *Where a disputed decision is the subject of an appeal, goods should normally be released and the possibility be available in given circumstances for duty payment to be left in abeyance. This should be subject, where required by national legislation, to the provision of a guarantee, such as a surety or deposit. Such a provision can be seen as extending the scope of the requirement in Article 13 of the Customs Valuation Agreement for all WTO Members to make provision for goods release in the event of delays in the determination of customs value.*

D. COSTS AND BENEFITS OF IMPROVING GATT ARTICLE X AND DEVELOPMENT CONCERNS

6. As noted above, greater transparency and predictability is a major demand of the business community, above all SME's, who cannot afford to spend a lot of time researching customs and other import and export procedures, and who need simple and standardised procedures. The measures proposed above should therefore save costs for business. They will also reduce government expenditure in a number of ways – for example by cutting down on the human resources previously needed to answer questions from business, by reducing court time, and by reducing the risk of poorly thought out regulations and procedures that imply a waste of administrative and financial resources.

7. However, even though all the above proposals are desirable in themselves and will eventually save money for traders and governments, there may be some modest start-up costs. In some cases, technical and other trade-related assistance may be needed for developing countries, especially LDCs, if they lack the resources to implement the proposals. In particular, technical assistance may be needed for individual LDCs to publish rules and procedures, establish enquiry points, or provide for

advance rulings and administrative appeals. The EC would be prepared to consider favourably requests for technical assistance in these areas made by developing-country partners, in the framework of the EC's development assistance.

8. In addition to providing assistance, the EC believes it would be quite reasonable to provide time for developing countries to implement such proposals as a means to make special and differential treatment precise, effective and operational. The EC recognises that LDCs, according to paragraph 3 of the 1 August 2004 mandate, shall only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capacities. The EC hopes nonetheless that LDCs, particularly if provided with assistance, will recognise the benefits and savings of the proposals made above and commit themselves to such transparency and good practice – in fact we believe the majority do so already.
