

**COMMUNICATION FROM KOREA**

The following communication, dated 15 March 2005, from the Delegation of Korea, is being circulated in advance of the Negotiating Group meeting of 22-24 March.

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**CLARIFICATION AND IMPROVEMENT OF ARTICLE VIII OF THE GATT:  
REDUCING ADMINISTRATIVE BURDENS**

**I. INTRODUCTION**

1. As addressed in Korea's previous communication concerning trade facilitation measures dealing with GATT Article VIII (G/C/W/403), WTO Members should emphasize the following principles in trade facilitation negotiations:

- Non-discrimination: MFN and National Treatment;
- Transparency;
- Predictability;
- Simplicity; and
- Reasonableness.

2. In line with the aforesaid principles, Korea presents the following area of discussion with respect to Article VIII:

- Reducing administrative burdens dealing with import and export formalities

**II. ISSUES AND CONCERNS**

3. Broadly speaking, there are two categories of administrative burdens associated with GATT Article VIII:

- Paperwork associated with the documentation requirements; and
- Customs procedures.

4. With respect to these burdens, we point out the following concerns:

- Governments of importing and exporting countries may request information from traders that can be found easily from other sources, or from commercial documents already submitted to the government;

- Traders may have difficulties in filling out required documents because the terms used in the documents, as well as the layout of the documents, are diverse in different countries;
- Traders may have to submit import or export related documents to several different government agencies to receive the final approval for importing or exporting; and
- When the consignment of goods arrives at the port of the importing country, traders may not have a clear idea on the time frame that it takes to process the goods and when the goods will be released.

5. These administrative requirements and uncertainties increase costs and create adverse business environment for traders. These costs and adverse environment have a disproportionate impact on SMEs, especially those of developing countries. While larger firms can allocate more manpower for administrative requirements, SMEs cannot always do so. Korea believes that there are some simple yet effective ways for WTO Members to reduce such burdens and uncertainties without much cost to the Member governments, and without sacrificing legitimate policy goals of the Members. Such measures include allowing the use of copied documents in customs procedures, harmonizing and standardizing the documents of different countries, adopting a 'single window', and utilizing risk management techniques.

### **III. RELEVANT PROVISIONS OF GATT ARTICLE VIII**

6. The relevant provisions with respect to administrative burdens are paragraph 1(c) of Article VIII of GATT, which states that "The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements", and paragraph 3 of Article VIII of GATT, which states that "No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning."

### **IV. SUGGESTIONS**

7. Korea believes that much of this paperwork and document-related costs can be reduced if the following suggestions are implemented:

- Acceptance of commercially available information and copies of documents;
- Harmonization & Standardization of document formats; and
- Use of a 'single window' where traders can submit all the necessary documents and data to a single agency.

8. Reducing the burdens associated with customs procedures are perhaps more difficult than streamlining paperwork and documentation requirements because customs procedures often involve physical inspections, which are intrusive and time consuming, and simple provisions may not be effective. Korea proposes that one of the ways to expedite customs procedures is to establish and publish an average time required for clearing and releasing of goods. In addition, in the long term, Korea believes that all Members should adopt pre-arrival processing, post-clearance auditing and risk management measures, which will greatly facilitate trade. Currently, some Members may not be in a position to adopt these measures, but Members should recognize the importance of pre-arrival processing, post-clearance auditing and risk management measures. Below, Korea will examine these suggestions in detail.

## **1. Acceptance of commercially available information and copies of documents**

9. Except for some justifiable cases, customs authorities should be able to forego certain documentation requirements whenever the relevant information (e.g., name of the buyer, seller, country of origin, quantity and description of the goods, and their estimated value) is already available in the context of the commercial transaction. Especially, if customs authorities operate electronic information exchange systems, the acceptance of commercially available information may significantly reduce traders' documentation burden without making additional demands on customs resources. Commercially available information includes information, which is included in business-to-business transactions such as bills of lading or commercial invoices.<sup>1</sup>

10. Accepting copies of documents in lieu of originals for import and export can also greatly streamline the customs process. Customs can, if necessary, always request the original documents at a later time.

## **2. Harmonization & Standardization of document formats**

11. If all countries use documents with the same layouts, with standard titles and classification of information requested from traders, the traders can fill out the documents more easily, thus reducing manpower required for paperwork and reducing trade-related costs. To standardize the format and layout of documents,

- first there should be a standard list of data which are collected by governments; and
- standardized classifications and names for these data.

12. The WCO Customs Data Model can serve such function. Currently, the WCO is in the final stages of developing the Customs Data Model. This Model is expected to enhance the harmonization and standardization of customs data requirements. Under this Model, the names and definitions of data elements required by the customs authorities will be harmonized to eliminate ambiguity for traders. The utilization of this model will enable a 'seamless data flow' between importing and exporting countries. If the model is fully utilized in a country where IT is extensively used for customs procedures, traders need to enter information only once, and the same information can be used for commercial invoices, import and export documents, release of goods and tax purposes, statistical purposes, and trade regulation purposes, since all information headings would be standardized.<sup>2</sup> Even for countries that do not use IT extensively, the use of common data sets will allow closer cooperation between the customs authorities of different Members and allow for better control of controlled or restricted goods. Further, that country will be prepared for the eventual and inevitable introduction of IT in its customs procedures.

13. Once the Data Model is in place, Members can consider

- Harmonizing and standardizing the format for their documents irrespective of whether it is paper-based or computer-based.

14. In this regard, Members can use 'aligned documents' so that all Members use the same size paper, with common items of information set out in the same relative position in each form. The most widely used aligned document is the UN Layout Key for Trade Documents. This Key even allows some measure of flexibility, as the Key has blank spaces for any country-specific information that a particular Member may require. Further, even though the Key has spaces for various different types

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<sup>1</sup> OECD (2002) TD/TC/WP(2002)50/FINAL, p. 7.

<sup>2</sup> OECD (2002) TD/TC/WP(2002)50/FINAL, pp. 9-10.

of information, if a Member believes that it need not gather some information listed in the Key, it can merely blank them out.

15. Korea believes that the use of such data models and aligned documents will significantly reduce the costs related to documentation and paperwork. We also note that having all WTO Members share the same format and layout for documentation may reduce problems arising from language, since regardless of the language used, the codes used for information and the physical layout within the document for each information would be the same for all Member countries.

### **3. Use of a 'single window' where traders can submit all the necessary documents and data to a single agency**

16. Currently, customs procedures for most Members require traders to directly interface with several different agencies for documentation requirements. To lessen this burden, Members should establish a 'single window,' which would act as a clearinghouse for all documents and data submission. This means traders need to submit data only once on the basis of streamlined document formats, and this 'single window' agency would administer all information on the document.

17. While the establishment of a 'single window' for information submission should help reduce administrative burdens and costs for traders, many Members may not be in a position to actually establish such 'single window' in the near future. Nevertheless, the Members should recognize the importance of such 'single window'. Korea is currently in the process of developing such 'single window', and Korea notes that the OECD observes 'single window' mechanisms would be easier to establish in developing countries than in advanced countries, because it is more difficult to overhaul an already-existing system into an integrated mechanism than to establish an integrated mechanism from scratch.<sup>3</sup>

### **4. Establishment and publication of average time required for clearing and releasing of goods**

18. Korea proposes that Members establish and make publicly available the average time taken for clearing and releasing of goods. The establishment and publication of the average time taken for clearing and releasing of goods enhances predictability and allows traders to better schedule the goods' movement.<sup>4</sup>

19. Through the *WCO Time Release Study: Guide to Measure the Time Required for the Release of Goods*, the WCO has guidelines in place to help its members measure the time required for releasing and clearing of goods. Along the same lines, Korea uses a *Time Release Survey (TRS)* to measure the time required for clearing and releasing of goods and to find problems within its procedures. However, for most Members, the result of the measurement is not usually made public. WTO Members may agree to make such measurements public.

20. Note that this measure would involve minimal burdens on Members since it merely requires each Member to establish and publish its average time required for clearing and releasing of goods without actually reducing such time. If there are irregularities in shipment or exceptional circumstances occur, Members would still retain the right to delay clearing of goods. However, Members may agree to a provision that, in cases where the release takes longer than the average time, traders would have the right to ask the customs authority the reason why the processing time for their goods is longer.

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<sup>3</sup> OECD (2002) TD/TC/WP(2002)50/FINAL, p. 15.

<sup>4</sup> OECD (2002) TD/TC/WP(2002)50/FINAL, p. 13.

## **5. Pre-arrival processing, post-clearance auditing and risk management measures**

21. Korea believes that the Negotiating Group on Trade Facilitation should encourage WTO Members to utilize pre-arrival processing, post-clearance auditing and risk management measures to accelerate the release of goods. This set of measures will bring benefits to the traders and the government. Post-clearance audits will facilitate the expeditious movement of goods at the customs because the clearance processing time will be shortened by allowing the controls to be carried out at a later stage. Post-clearance audits also reduce the need for expensive storage space at ports and the risk of theft and spoilage, so they should also reduce the cost of insurance.<sup>5</sup>

22. These measures require Members to use extensive risk assessment and management procedures. Korea realizes that not all Members may be prepared to utilize risk management procedures at this juncture. However, with proper technical assistance and capacity building support, developing and least-developed countries will be able to enjoy the benefits from such measures.

23. Moreover, many additional trade facilitating measures on customs procedures, such as introducing authorized traders and reducing the required customs procedures for less risky shipments, require the introduction of pre-arrival processing, post-entry auditing, and risk management systems. Therefore, the Negotiating Group on Trade Facilitation should recommend that the Members introduce and utilize pre-arrival processing, post-entry auditing and risk management systems and that the Members adopt these measures as soon as they are feasible for each Member.

## **V. IMPLEMENTATION CONCERNS**

24. Korea believes that many of the measures we have suggested can be achieved without significant financial or administrative burden. Some measures such as the standardization of document formats may involve a substantial one time cost as Members introduce new formats or realign their previous formats, but once the new format is in place, the additional costs of utilizing these formats should be minimal.

25. However, many of the measures we have suggested may require Members to review their current documentation requirements and customs procedures. For example, some Members may need to carry out time release studies for clearing and releasing of goods. In these cases, assistance by relevant international agencies, such as the WCO and the World Bank, especially those of the least-developed countries, may be warranted.

26. Some measures may also require a deepening of human capital. For example, for some Members, the operation of a 'single window' or the adoption of risk management techniques may require training of their officials. International organizations may hold training sessions for officials from the less experienced Members. These training sessions should include short seminars to familiarize officials with key concepts; and appropriate apprenticeships where officials from less experienced Members can work at the agencies of the more experienced Members and gain practical experience. As the deepening of human capital requires time, developing countries may require a longer period of time to institute these measures. Individual Members may have roles to play in the aforesaid training sessions as well. Korea has provided some training sessions through the Korea International Cooperation Agency (KOICA).

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<sup>5</sup> OECD (2002) TD/TC/WP(2002)50/FINAL, p.18.

27. Korea would like to remind Members that the developing and least-developed countries should take the initiative and point out the needs and priorities involved in instituting various trade facilitation measures and what elements are required to address these concerns.

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