

COMMUNICATION FROM THE EUROPEAN COMMUNITIES AND AUSTRALIA

The following communication, dated 17 March 2005, from the Delegations of the European Communities and Australia, is being circulated in advance of the Negotiating Group meeting of 22-24 March.

**CLARIFICATION AND IMPROVEMENTS TO GATT ARTICLE VIII:
PROVISIONS ON FEES AND CHARGES**

1. This submission sets out proposals to clarify and improve GATT Article VIII provisions on fees and charges. The EC has already made a submission on GATT Article X in which it made proposals to enhance the transparency of fees and charges applicable to import, export and transit procedures. This submission addresses the parameters for the fees and charges themselves. The proposals would increase predictability for importers and exporters, particularly small- and medium-sized companies, and help avoid the imposition of unwarranted and disproportionate fees and charges. For governments, they would provide greater clarity to administrations in the design and application of fees and charges. The proposals also address a number of non-tariff barriers notified by Members in the NAMA negotiations and are relevant for the clarification and improvement of fees and charges concerning GATT Article V on freedom of transit.

I. SCOPE OF PROPOSAL

2. It is essential that the scope of commitments on fees and charges applies beyond customs to other agency interventions and tasks undertaken on their behalf, as otherwise gains in one area could be diminished by unnecessary fees and charges applied elsewhere. The EC proposes that:

1. *The disciplines should apply to all fees and charges imposed by customs authorities or by any other government body (including tasks undertaken on their behalf) on or in connection with importation or exportation, or as a condition for importation or exportation, to the extent not already covered by other WTO Articles and Agreements.*

II. GENERAL DISCIPLINES ON FEES AND CHARGES

3. Article VIII (paragraph 1(a)) establishes certain obligations regarding fees and charges. Notably, it authorizes only those fees and charges that are limited to the approximate cost of services rendered, and prohibits fees and charges aimed indirectly at protecting domestic products or having an effect equivalent to an import or export tax for fiscal purposes. Past dispute settlement cases have partially clarified the provision, notably the definition of a fee or charge limited to the approximate cost of the service rendered, and the kinds of services permitted. There is still however considerable uncertainty over what may or may not be allowed. This has led to the introduction of widely varying practices around the world and uncertainty and unwarranted costs to traders. To address these concerns, and drawing on past panel conclusions, the EC proposes a clarification and improvement of Article VIII (paragraph 1(a)) to set out clearer disciplines for fees and charges:

2. *With regard to fees and charges applied in connection with importation and exportation, Members must ensure:*

- *the service provided is related to the goods in question*
- *fees and charges refer to the approximate cost of the service provided*
- *fees and charges may not therefore be calculated on an ad valorem basis*
- *administrative or operational costs not constituting a service associated with the treatment of imports or exports may not be imposed on such imports or exports*
- *non-discrimination in the design and application of fees and charges.*

III. REDUCING THE NUMBER AND DIVERSITY OF FEES AND CHARGES

4. Article VIII (paragraph 1(b)) recognizes the need for reducing the number and diversity of fees and charges. However, it does not create any commitment actually to do so. It should. To address this significant weakness in the WTO rule book, the EC proposes the following clarifications and improvements:

3. *A requirement for Members to review, and if necessary, consolidate or reduce the number and diversity of their fees and charges. All remaining fees and charges must be notified or made publicly and easily available, together with the justification for them. There should be an adequate time period between the publication of new or amended fees or charges and their entry into force.*
4. *A requirement to establish a list of permissible fees and charges. Practices such as the levying of “consular fees” or “consular invoices” and the like should be discontinued.*

5. In taking these proposals forward, the EC notes that in many Members, no fees and charges are applied for normal customs services offered at official clearing points. It is only for services beyond the normal tasks, for example customs processing outside normal opening hours, that fees are sometimes levied. Such practices can facilitate trade and Members could consider ways to promote them where appropriate, and charging for them, if at all, to a level commensurate with the services provided.

IV. COSTS, BENEFITS AND ISSUES RAISED BY DEVELOPING COUNTRIES

6. The proposed clarifications and improvements set out above should not imply costs in terms of administrative capacity, since administrative savings should arise, for example with any reduction in the number and diversity of fees. However, to the extent that least-developed countries and possibly other Members would seek advice on the design and implementation of new fee structures, the EC would be prepared to consider favourably such requests for assistance. Furthermore, international organizations and Members have relevant experience that could be used.

7. Concerns have been raised about the impact of reforming fees and charges on government revenue, particularly in countries where receipts from customs play a significant role in the government's budget. However, legitimate fees and charges can remain and can also prove an important means to support the costs for developing-country members of providing a service to traders. Moreover, the EC notes that its proposals to simplify and rationalize fees and charges would generate significant benefits, including for trade between developing countries, where evidence indicates that fees and charges may be a particularly heavy burden on importers and exporters, notably for goods in transit.
