

COMMUNICATION FROM HONG KONG, CHINA

The following communication, dated 26 April 2005, from the Delegation of Hong Kong, China, is being circulated in advance of the Negotiating Group meeting of 2-4 May 2005.

PROPOSAL FOR IMPROVING GATT ARTICLE X

I. PROPOSAL

1. Hong Kong, China proposes the following improvements to Article X of GATT 1994:

(a) Transparency and Publication of Information

All measures referred to in paragraph 1 of Article X of GATT 1994 should be published in a clear and consistent manner, through a readily accessible and widely available medium, at no cost or at a charge commensurate with the cost of services rendered, and in as much advance as possible.

(b) Electronic Publication of Information

- (i) In addition to (a) above, any information to be published under proposal (a) should be made available by the publishing Member for access by any interested parties through electronic means at no cost or at a charge commensurate with the cost of services rendered.
- (ii) Each Member should notify the other Members through the Secretariat the means to access the information published electronically.

(c) Consultation with Traders

- (i) Each Member should establish effective mechanisms for exchanges with traders, whose views should be duly taken into account, concerning the administration of measures referred to in paragraph 1 of Article X of GATT 1994.
- (ii) When formulating, implementing and reviewing any measures referred to in paragraph 1 of Article X of GATT 1994, opportunities should be provided for consultation with traders if substantial trade interests or major changes to the existing measures are involved.

II. EXPLANATION

2. Proposal (a) provides more clarity to paragraph 1 of Article X. To ensure that measures are published promptly in such a manner as to enable governments and traders to become acquainted with them, the proposal sets out the major and important parameters for publication, namely:

- (a) in a clear and consistent manner;
- (b) through a readily accessible and widely available medium;
- (c) at no cost or at a charge commensurate with the cost of services rendered; and
- (d) in as much advance as possible.

3. The first parameter provides that the information should be published in a clear and consistent manner to avoid confusion to traders. The second parameter ensures that information is disseminated through a readily accessible and widely available medium. It does not preclude the use of multiple media. The third parameter ensures that information should be made available free of charge, or at a charge commensurate with the cost of services rendered such as printing costs. The fourth parameter clarifies the term "promptly" by requiring publication of information in as much advance as possible of it being "made effective" as stipulated in paragraph 1 of Article X. In accordance with paragraph 1 of Article X, the proposal does not require the disclosure of confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

4. On top of proposal (a), proposal (b) provides for electronic publication of information, either as the only means of publication or as an additional one. With the rapid advance in technology and the widespread adoption of the Internet, the electronic means has become the most efficient and effective means of communication. It also levels the playing field for traders to the extent of narrowing the gap between large and resourceful enterprises and small and medium ones in terms of cost of access to information. Electronic publication of trade regulations should therefore be encouraged. Once a Member has established a channel for electronic publication of trade regulations or in case of future changes, it should notify other Members through the Secretariat. Obviously, there are implementation concerns and they are fully recognised in the next section.

5. Proposal (c) relates to paragraph 3(a) of Article X and provides for the establishment of effective mechanisms for exchanges with traders concerning the administration of trade regulations. There can be a single mechanism or multiple ones, taking different forms for different Members, depending on the circumstances of individual Members. For example, it can be a customer liaison group, an advisory body, or a consultative council, with the participation of the business sector, consumer organizations, academics or professional bodies, and any other interested parties, as a Member deems appropriate. Proposal (c) goes further that traders should be consulted when measures are being formulated, implemented or reviewed if substantial trade interests or major changes to the existing measures are involved. It is noted that the definitions of "substantial trade interests" and "major changes" may cause concern. However, it is not possible to provide a hard and fast rule and to set precise definitions due to varying circumstances. Each Member may draw up broad and reasonable guidelines to suit its own domestic situation and examine each case accordingly.

III. IMPLEMENTATION CONCERNS

6. Implementation concerns are foreseen regarding proposals (b) and (c). Members are encouraged to examine their own situations (e.g., whether they have a governmental website, how they consult the trade in day-to-day operation, etc.) and share their experience with other Members so

that lessons can be learnt on how to implement these proposals in the simplest, most efficient and cost effective manner. Technical assistance should be provided to Members in need to implement these proposals.

7. In addition to technical assistance, a longer implementation period can be considered for these proposals.
