

COMMUNICATION FROM THE EUROPEAN COMMUNITIES

The following communication, dated 28 April 2005, from the Delegation of the European Communities, is being circulated in advance of the Negotiating Group meeting of 2-4 May 2005.

FREEDOM OF TRANSIT

I. INTRODUCTION

1. This submission sets out problems faced by traders in relation to transit and makes proposals for addressing transit issues in the negotiations on Trade Facilitation, notably through clarifications and improvements to GATT Article V. Despite existing GATT rules aimed at ensuring the smooth and non-discriminatory flow of trade across borders for transit, freedom of transit is often absent or compromised in practice. Traders in landlocked WTO Members, who generally have to rely on possibilities for transportation through neighbouring countries, face particular difficulties. However, traders in all WTO Members, for whom the most cost-effective way of exporting or importing goods will be to cross the territory of another WTO Member, have a clear interest in ensuring the freedom of transit.

II. TRANSIT PROBLEMS

2. The following is a non-exhaustive list of problems identified by developing- and developed-country traders in relation to transit:

- Lack of information on and transparency of transit requirements. National rules may change frequently and be enforced without prior notice, without consultation and with a retroactive date of implementation;
- High, discriminatory and unwarranted transit charges and illegal roadblocks used to levy fees;
- Excessive, burdensome and non-standardized documentation, data requirements and procedures. Documents and certificates may become invalid due to delays occurring in transit and / or within an unreasonably short time period;
- Difficulty with the return, at the point of exit, of cash guarantees posted at the point of entry. Imposition of disproportionate guarantees;
- Unjustifiable restrictions on means of transport, on drivers and goods in transit, including requirements for consignments to be transported under escort;
- Lack of co-ordination between different agencies involved in transit;
- Lack of willingness or refusal on the part of transiting countries to co-operate with exporting or importing countries, including with regard to the application of regional transit regimes or corridors;

- Non-application of international, regional or bilateral instruments for transit;
- Lack of resources in terms of trained personnel and infrastructure.

3. The combined effect of these problems significantly hinders trade. Many of these problems fall within the purview of GATT Article V, but these provisions lack detail, which has hampered their effective application in the past.

III. PROPOSALS FOR CLARIFIED AND IMPROVED RULES

4. The clarification and improvement of GATT Article V on freedom of transit, in conjunction with proposals concerning GATT Articles VIII and X, can address some, even if not all, of the above problems. Some issues may need to be addressed, at least in part, in other fora, including the DDA negotiations on Services. The question of infrastructure should primarily be addressed in the context of long-term development strategies involving multilateral and bilateral development co-operation and investment bodies. Several other issues may be most effectively addressed through working with relevant international organizations in parallel to developing improved WTO rules on transit. Furthermore, in taking proposals forward in the Negotiating Group on Trade Facilitation, legitimate public policy goals, related for example to national security, health, safety and the environment, must obviously not be compromised in any way. In this respect, the exceptions provided for in GATT Article XX and XXI are fully applicable and relevant and should therefore be kept in view.

5. In terms of possible WTO measures to improve freedom of transit, the following proposals are put forward for Members' consideration:

- Improve transparency of transit requirements, procedures and charges. A number of proposals already submitted to the Negotiating Group, including with regard to the publication of information and requirements for predictability and consultation, are relevant and should apply to transit.
- Agree more effective GATT Article V disciplines on charges for transit. Proposals already submitted to the Negotiating Group in relation to GATT Article VIII rules on fees and charges could be a basis for elaborating parallel provisions on charges for transit. Members could consider how to ensure that all charges for transit are effectively covered.
- Simplify and standardize documentation, data requirements and procedures applied to goods and means of transport in transit. A number of proposals already submitted to the Negotiating Group, notably in relation to GATT Article VIII, are relevant. These include pre-arrival processing of transit documents, the use of commercially available information and data, risk management, authorized trader schemes, the establishment of "single windows", and time release measures.
- Ensure non-discrimination between means of transport, between carriers and between types of consignment in relation to transit procedures, including with regard to fixed installations which themselves are capable of moving goods, such as pipelines. Any restrictions, controls or requirements must pursue a legitimate public policy objective, be proportionate and be applied uniformly.
- Introduce more effective disciplines on the level, nature and management of guarantees required from transit operators, including rules to ensure that they are not used as an instrument to raise revenue.

- Improve co-operation and co-ordination between all concerned agencies in each WTO Member and across borders. In many cases solutions to transit problems can only be found through regional collaboration since it is at the regional level that a large part of the problems related to unnecessary hindrances to transit are experienced. Consideration could be given to providing guidance on the main elements of regional transit and their proper implementation and improving regional co-operation on transit. WTO Members could also envisage provisions to take account of international standards and instruments, including when drawing up bilateral or regional instruments.
- Operationalize the existing commitment in Article V to grant freedom of transit through the territory of each Member via the "routes most convenient for international transit", for example by leaving the choice of route and means of transport to the operator.
- Clarify and improve terminology to reduce perceived uncertainty and avoid loopholes, for example with regard to the definition of "goods (including baggage)" in GATT Article V, paragraph 1.

6. The use of relevant international standards and instruments is relevant to a number of the above proposals and should be taken fully on board in further developing proposals. The provision of technical assistance and support for capacity building is likely to be necessary for some developing countries to implement some of the above proposed commitments, including due to start-up costs. The identification of Members' needs and priorities in relation to proposals can help take this forward. It would also put Members in a position to take fully into account the principle of special and differential treatment in the results of the negotiations and to make such treatment precise, effective and operational.
