

COMMUNICATION FROM PARAGUAY, RWANDA AND SWITZERLAND

The following communication, dated 29 April 2005, from the Delegations of Paraguay, Rwanda, and Switzerland, is being circulated in advance of the Negotiating Group meeting of 2-4 May.

TRADE FACILITATION: IMPROVEMENT OF ELEMENTS RELATED TO TRANSIT

I. INTRODUCTION

1. This proposal aims to clarify and improve GATT Article V with a view to further expediting the movement of goods in transit in accordance with Annex D of the July Package and the Doha mandate. It intends to address issues that are of special relevance to landlocked Members and, therefore, important to all WTO Members, since trade facilitation will bring along global benefits.
2. The following proposal is not exhaustive and we reserve the right to revise, supplement or withdraw this proposal on this subject in the future, individually or collectively.

II. THE SPECIFIC CHALLENGE OF LANDLOCKED COUNTRIES

3. 10% of the total population of the developing world lives in landlocked countries. This represents approximately 350 million people. Globalization did not bring the expected positive change in terms of development to these countries nor provided incentives for more dynamic trade relations, despite the efforts undertaken with a view to participate more actively in the regional and world commercial exchange.
4. Landlocked developing countries¹ (LLDCs) have been highly under performing with trade flows reaching only one quarter of those of other developing countries that are not landlocked. Studies have indicated that the annual growth rate of the LLDCs' is 0,7% inferior to that of coastal countries, as a consequence of their geographical situation. Export values for all developing countries grew at respective average rates of 3.2% and 8.7% during 1980-90 and 1990-94, the corresponding figures for LLDCs were only 2.9% and 0.4%.
5. These figures show that many LLDCs have not been able to compete efficiently in the international trade market, mostly as a consequence of the high cost of transport. As liberalisation of border measures continues, the effective rate of protection provided by transport costs is now, namely in the case of LLDCs, considerably higher than that provided by tariffs. Their freight and insurance costs as a percentage of exports (12.9% on average) largely exceed those of developing (8.1%) and

¹ For purposes of this submission, this will include least developed land locked countries.

developed countries (5.8%), yet reaching astronomic proportions namely in Africa (in some cases over 50%). A recent study estimates, that doubling of transport costs reduces trade volumes by 45%. Another recent research paper revealed that transport costs for the landlocked South American countries are about 43 % to 66% higher than the same costs for other MERCOSUR members, and up to 240% the costs in the US. Transport costs weigh particularly heavy in their total trading costs, as LLDCs exports are little diversified, composed of bulky, often low value commodities. In the great majority of countries, three products account for more than 50% of total exports in LLDC WTO Members States in terms of value based on HS 6 digit classification.

6. It is not only cost but also speed and low predictability of shipping times, highly dependent on transport infrastructure and transit procedures in their transit neighbours that leave LLDCs neglected destinations for FDI, thus impeding vertical diversification in manufacturing. Yet, being landlocked is not a hopeless case per se. Many of the European landlocked countries, as is the case for Switzerland, have demonstrated that it is possible to overcome the geographical handicap and prosper. Studies attribute these success stories to three fundamental conditions: (1) the development of adequate national transport networks and efficient transit transport systems, (2) proximity to a large regional market and (3) promotion of industries and activities that are not sensitive to distance.

7. In addition to these important factors, others have been shown to be essential: the economic relationship with neighbouring countries (regional integration), the transparency and predictability of transit countries' rules, the degree of coordination and cooperation and trust between the parties involved (government to government but also between customs and the private sector), the will to implement adequate rules as well as bilateral and multilateral arrangements or agreements and an appropriate legislation to enforce penalties and sanctions.

8. Probably all landlocked countries have made and continue to make efforts to alleviate the geographical handicap by seeking arrangements with their costal neighbours. In the following, we describe two types of transit arrangements, which Members may wish to consider in order to inform the negotiations on necessary improvements of GATT articles V, VIII and X. The first example shows the case of Switzerland, which for a long time has cultivated strong economic ties with Member States of the EU and EFTA. The second example describes an arrangement of the kind implemented in Africa (e.g., Northern and Central Corridor Arrangement (linking Eastern and Central Africa), Trans Kalahari Corridor, etc.) and in Asia (e.g., Treaty of Transit between Nepal and India). Also it is worth mentioning that in South America, there are some attempts to implement integration hubs (such as the Andean hubs, the Central Interoceanic hub and the Paraná – Paraguay Waterway hub) with a view to facilitate trade, through the promotion of measures capable of improving the regional physical integration.²

III. DIFFERENT SOLUTIONS (TRANSIT ARRANGEMENTS)

9. The transit arrangements cover "traffic in transit" according to GATT Article V:1: *"Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is termed in this article "traffic in transit".*

The "Common Transit" Convention (between European/EFTA countries)

10. In the very large majority of cases when Switzerland is involved in international transit, the rules defined in two Conventions signed in 1987 between the European Community and the EFTA

² For further Information please refer to www.IIRSA.org.

countries are applicable: One Convention established a common transit procedure, while the other provided for the simplification of import, export and transit formalities by introducing the Single Administrative Document (SAD). In the remaining cases the provisions under the TIR Convention apply.

11. The common transit procedure provides for customs and excise duties, VAT and other charges on goods to be suspended during their movement from the office of departure to the office of destination thus requiring only one (final) customs formality. It may be used by economic operators to facilitate the movement of goods from one Contracting Party to another. However there is no obligation to use it. The procedure starts at the office of departure and ends when the goods and transit declaration are presented at the office of destination. Under certain circumstances and subject to an authorisation being granted by the relevant customs authority, the common transit procedure is simplified (i.e. authorised consignors and consignees carry out transit operations without presenting the goods and the corresponding documents at the customs office).

12. The most recent reforms of the system – the so-called European and EFTA wide "New Computerised Transit System" (NCTS) – tend to bring the customs towards the goods rather than presenting the goods to the customs. The NCTS implies modern techniques such as fully computerised procedures; sampling based on risk management; collaboration between customs of the Parties to the Convention as well as the private sector; and most importantly an atmosphere of mutual trust. Under this system, all information flows are electronic. The overall objective of the NCTS is to enhance the security of international movement of goods while facilitating the latter.

Corridor Transit Arrangements

13. Solutions as described above have taken decades to materialise. In many cases developing countries have started with a framework agreement between interested parties fixing very general principles of cooperation in relation with transit. Based on these frameworks parties have then engaged into more detailed arrangements with their neighbours, which secure facilitated transit of goods along specific routes, so called transit corridors (such arrangements are implemented in Africa, Asia and Southern America). The importance of such corridor agreements has been acknowledged in the Almaty Programme of action: *"The establishment of regional transport corridors and the adoption of common rules and standards, where appropriate, should play a major role in transit transport facilitation."* In these arrangements transit is confined to specific routes (networks), which link landlocked countries with major seaports designating for this purpose specific entry and exit customs offices. For these corridors the signatories to the arrangement have agreed on a set of streamlined transit procedures, which will be detailed below.

14. All measures in the arrangements seek a balance of the two-fold objective of facilitating cargo transit and preventing diversion of goods in transit into the local market.

15. Although, in accordance with the Specific Annex E of the Revised Kyoto Convention, the free movement of goods across the territory remains an objective, confining simplified transit procedures to specific corridors are considered to be a manageable solution for many countries when such arrangements are not conceivable for the free movement of goods across the whole territory. As a consequence of high volumes transiting these corridors, they may lead to a number of economies of scale in investment (namely road and logistics infrastructure) and transport operations. Some countries have used the enhanced predictability and traffic concentration due to these arrangements to construct so called "dry ports" that either serve to disencumber sea ports in transit countries or to concentrate logistics facilities (inland clearance depots) in landlocked countries. They also frequently serve as transshipment points. The management of corridor arrangements as well as dry ports may involve public private partnerships.

IV. COMMON FEATURES

16. All bilateral, regional or international transit arrangements show some common features. They all strive to strike the right balance between legitimate safety/security concerns (including the illegal diversion of goods into the domestic market) and the faster and more efficient movement of goods in transit.

1. Special procedures for transit

17. Special procedures for transit that consist of separate physical lines for border crossing and simplified border formalities.

2. Distinct requirements according to the risk involved and the especial characteristics of goods

18. Treatment of goods in transit is adapted to the risk involved and the special characteristics of goods, making a difference between "normal" goods, "dangerous goods", "perishable goods" and "sensitive goods" that show particular risks to fraud (e.g., tobacco and alcohol).

3. Common customs documentation and procedures

19. The contracting parties agree on common customs documentation and procedures of the kind of introducing simplified documents that are aligned to international standards (e.g., the use of a regional single administrative document attached to a shipment as in the arrangement between the EU and EFTA-States).

4. Limiting physical inspections and controls

20. As a major achievement, and based on mutual trust between governments and federal governments amongst them, but also between the government of departure and its private sector, the parties are limiting their physical inspection where these are warranted by the actual circumstances or risks. Border authorities avoid to carry out inspections and controls more than once over the same shipment, unless it is absolutely necessary. Also, usually no quality control and no veterinary, medicosanitary or phytosanitary inspection are imposed for goods in transit (except in cases where a risk of contamination exists).

5. International or regional customs guarantee system

21. In response to past experience that the transit regime has often been used as a means to import goods fraudulently, the arrangements foresee the use of an internationally or regionally valid guarantee system in order to avoid provisional taxation while securing revenue in case of inland diversion of goods. Usually, an individual guarantee is provided for each transport movement, covering the full amount of customs duties and other charges, like VAT or excise duties. The amount is based upon the highest rate applicable to the goods in the country of departure. For certain goods, involving greater risks, special rates apply or particular types of collaterals are required. Adopting an efficient guarantee system is central to the success of any transit arrangement, particularly through the use of a single guarantee in all the transit countries, and where the guarantee is renewable for subsequent consignments once a previous one is proved to have reached its destination.

6. Identification of consignments (sealing)

22. Identification of goods under the transit procedure is very important to stop any fraudulent importation of goods. As a general rule, identification of these goods is ensured by sealing. In addition to this classic function of seals, electronic seals have been developed to provide for the detection and tracking of trucks. Members may wish to consider Annex E, Standard 3 of the Revised Kyoto Convention that enumerates minimum requirements to be met by Customs seals and fastening.

7. Communication, Cooperation and Coordination between authorities

23. Due to the nature of transit involving at least two states, cooperation and coordination between authorities is a determinant factor in the success of such arrangements. This cooperation and coordination can take different forms reaching from the simple harmonisation of border crossing procedures and working hours to shared infrastructure (one-stop border posts) and delegated competencies (both exit and entry formalities are handled by the same authority). Under these bilateral or regional transit arrangements, the contracting parties set up communication systems to exchange information and fight crime in the border area.

8. Cross-border vehicle regulations

24. Varying regulations on vehicles and loading can be very cumbersome, often leading to the transshipment and unsealing of goods and hence impeding the speedy transport of goods. Harmonisation of vehicle and loading requirements, as well as the recognition by the contracting parties of international or other agreed vehicle insurances, are therefore also part of many transit arrangements.

9. Monitoring, including enhancing transparency and predictability, of the transit arrangement

25. Experience has demonstrated that transit arrangements are not implemented with the ratification of the arrangement. A close monitoring in each contracting party is crucial. Some arrangements foresee the appointment of national transit coordinators; others introduced performance indicators (e.g., target clearance times). Some African countries have set up public private partnerships to manage and monitor the arrangement.

26. It is also important that the contracting parties do not enforce unilateral rules and regulations affecting goods in transit where common regulations should prevail. It is recommended that all parties incorporate measures relating to transit into their arrangements. Such measures need to be addressed in regular meetings between transit coordinators, or contracting parties. Coordination platforms also play an important role in ensuring through appropriate measures that rules regarding transit and connected activities are executed in accordance with the mandate. This is particularly accurate in relation with the levy of unpublished new or modified fees and charges pertaining to transit. Of course, the objective remains the elimination of transit fees and charges, where it cannot be associated to services rendered.

10. Promotion of regional transit arrangements

27. Given that transit arrangements benefit all parties involved, it becomes obvious that the promotion of regional transit arrangements should be part of the clarification and improvement of GATT Article V.

How do these common features relate to Article V Freedom of Transit?

28. The above listed common features can all find a root in to the principles set out in GATT article V. They namely specify what is meant by goods in transit "shall not be subject to any unnecessary delays or restrictions" (article V:3). They also relate to the requirement that no distinction be made affecting goods in transit based on origin, ownership, destination, or mode of transit (article V:2).

V. PROPOSAL

29. We propose that members examine the elements discussed above, with the view to improving and clarifying the provisions of GATT Article V.

30. In addition, we are aware that many transit arrangements currently exist all over the world, but we also note that, unfortunately, many of such agreements face huge difficulties in their implementation. Establishing WTO rules on transit would provide landlocked countries with effective instruments to put in place and make such agreements work. They are essential for these countries' trade development and therefore is a priority for them.

31. There could be a provision encouraging Members to engage in discussions in their region.

32. Furthermore, Members should give careful consideration to the possibility of acceding to international instruments relating to Customs transit if they are in a position to implement them. If this is not possible, when drawing up bilateral or regional agreements with a view to setting up international Customs transit procedure, they should consider the Standards and Recommended Practices of Annex E of the Revised Kyoto Convention of 1999.

33. Transport of goods in transit will significantly improve with the introduction of some degree of automation: pre-announcement of the goods in transit to the exit Customs offices and Customs of destination, direct trader inputs (submission of all entries to customs) as well as the handling of the transit guarantee (management of guarantee accounts, calculation of total duties, etc.). The inclusion of these elements of automation could be part of an additional package of measures under article V, in the context of Annex D of the July package.

34. Other upgrading measures include specially simplified procedures for authorised traders. The bundling of various packages of measures needs to be further explored. Sequencing of measures needs to be considered carefully. In effect, the implementation of some measures may require the prior implementation of other measures.

VI. SPECIAL AND DIFFERENTIAL TREATMENT

35. Many developing countries, particularly the least developed of them will need special and differential treatment, based on their capacities to implement the proposals above mentioned. This is for example true for those countries that have no or very little IT in place or, where the banking system is not sufficiently developed for customs to require that transit shipments be covered by a bank guarantee. The implementation of these proposals will, in many cases require that technical and financial assistance be extended to developing countries, most especially the least developed of them as envisaged in Annex D of the July package. The extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members. On its part, Switzerland will make every effort to ensure support and assistance directly related to the nature and scope of the commitments in order to allow implementation. Further elements of special and differential treatment may be proposed at a future date. The modalities and funding for such technical assistance needs to be further explored.

VII. ELEMENTS FOR TECHNICAL ASSISTANCE

36. Countries may require technical assistance in the following areas:

- training on the procedures of a transit arrangement;
 - upgrading of systems such as ASYCUDA and others with transit modules introducing a certain degree of automation to transit procedures;
 - technical assistance to install computerised risk assessment;
 - support customs authorities and national financial institutions to put in place procedures to implement a functioning guarantee system.
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