

COMMUNICATION FROM SINGAPORE

The following communication, dated 8 June 2005, from the Delegation of Singapore, is being circulated in advance of the Negotiating Group meeting of 13-14 June.

**GATT ARTICLE V
(FREEDOM OF TRANSIT)**

1. This paper sets out a number of proposals to clarify and improve Article V with a view to further facilitating the movement of goods in transit.

2. The proposals are by no means exhaustive. This paper is intended to complement the recent papers submitted by Bolivia, Japan, Kyrgyz Republic, Mongolia and Paraguay [TN/TF/W/28 and Add.1], Korea [TN/TF/W/34], EC and Paraguay [TN/TF/W/35 and Add.1] and Paraguay, Rwanda, Switzerland [TN/TF/W/39] to clarify and improve Article V. In addition, proposals that have been submitted to date on Articles VIII and X, as they relate to transparency (of transit requirements, procedures and charges), and simplification and standardization (of documentation, data requirements and procedures) may also be relevant to the clarification and improvement of Article V.

1. Risk Management

3. Members should employ risk management techniques that enable their authorities to concentrate inspection and monitoring activities on high-risk goods in transit, and facilitate the movement of low-risk goods in transit. For example, the risk of illegal diversion into domestic markets is generally higher for goods which are subject to special controls or have higher duties, or both. In discussing the issue of risk management as it relates to Article V, it may be useful to look at Japan's recent explanatory note on its experience in risk management [TN/TF/W/42].

2. Custom House

4. Under Article V:3, traffic in transit can be entered at the proper custom house. It is not to be subject to unnecessary delays or restrictions unless there has been a failure to comply with the applicable customs laws and regulations.

5. "Unnecessary delays" is ambiguous and may possibly be subject to arbitrary interpretation. In this connection, Members may wish to discuss stipulating [a] time period[s], after which any further retention at the custom house could be deemed to constitute unnecessary delay.

3. Article V:3

6. Article V:3 states that "traffic in transit ... shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered".

7. It is unclear what the permissible scope of "administrative expenses entailed by transit" and "the cost of services rendered" is and how these requirements are to be applied on an objective and reasonable basis. It is suggested that Members discuss what can legitimately be charged in respect of transit traffic on these bases.

8. It is possible that "administrative expenses" could serve as a backdoor for the imposition of arbitrary charges. It would therefore be useful for Members to discuss whether and under what situations these expenses should be imposed on transit traffic. In this connection, Members could consider drawing up guidelines for the imposition of "administrative expenses". For example, Members could clarify that "administrative expenses" should only relate to costs expended for risk assessment and random inspections. This could be a nominal fee which should be applied on a non-discriminatory basis. Members could discuss what other elements to include in these guidelines.

9. With regard to "the cost of services rendered", it should be clarified that any charges imposed should only be in respect of the provision of services necessary to ensure the effective transit of goods. The charges levied must refer to the approximate cost of the service rendered and may not be calculated on an *ad valorem* basis.

4. Strengthening international cooperation with respect to transit

10. Many issues raised in relation to Article V have already been debated extensively in other fora such as the World Customs Organization (WCO). Where relevant, in order to avoid the duplication of efforts and save time and effort, Members should build on the discussions and results achieved in the WCO and other fora.

11. Further, it is recognized that transit traffic is, in many cases, best facilitated through regional cooperation. Notably, in TN/TF/W/39, Paraguay, Rwanda and Switzerland have highlighted that "the promotion of regional transit arrangements should be part of the clarification and improvement of Article V". Apart from encouraging Members to cooperate on a regional basis, the Negotiating Group could also consider the possibility of drawing up a non-exhaustive list of elements that Members should endeavour to incorporate when negotiating regional transit agreements. For example, Members could discuss having, to the extent possible, harmonized road traffic regulations with regard to road signs, road transport permits, technical requirements of vehicles, inspection certificates and insurance, etc., which may help to reduce the costs required to comply with different regulations. In this connection, we note that in TN/TF/W/39, Paraguay et. al. have enumerated a number of common features in certain transit agreements which may be relevant for our discussions.

5. Special and Differential Treatment (SDT)

12. We recognize that least-developed countries and some developing countries may have difficulties implementing some of the proposals relating to Article V. SDT should therefore be an integral part of any commitment in this area. In this connection, we note that the papers submitted on Article V contain specific proposals on SDT. Further to these proposals, Members may also wish to discuss:

- (a) longer implementation time-frames for developing and least-developed countries;

- (b) allowing developing and least-developed countries to implement, on a best-endeavour basis, the more onerous obligations resulting from the Article V negotiations, including in the context of phased-in approaches.
