

COMMUNICATION FROM INDIA AND THE UNITED STATES

The following communication, dated 22 July 2005, from the Delegations of India and the United States, is being circulated in advance of the Negotiating Group meeting of 25-26 July.

Proposal by India and the United States

I. PROPOSAL

- Establish a multilateral mechanism for the exchange and handling of information between Members.

II. EFFECTIVE COOPERATION

1. An important element of the Trade Facilitation negotiating modalities includes the mandate to "aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues." The Trade Facilitation negotiations present an opportunity to achieve an enhanced systemic foundation for cooperation that will be a significant achievement by offering new and enhanced ways for Members to improve border regime efficiency while also enhancing capabilities to ensure compliance with domestic legal requirements.

III. EXPERIENCE

2. Traditionally, cooperative information exchange efforts have been undertaken in a bilateral context, particularly with regard to case-specific matters that have advanced to the level of an actual ongoing investigatory proceeding. Such approaches will continue to be important to address the often unique demands of an advanced individual investigation. The current negotiations provide an opportunity to give a multilateral underpinning to such cooperative efforts. At the same time, the unprecedented growth in global trade provides new challenges to authorities responsible for administering a border regime. Advancements in information technology and logistics techniques – and these negotiations – all present the potential for the establishment of new tools for authorities to meet such challenges.

3. Increasingly, border authorities place a premium on utilizing functions that are "away from the border." Advancements of this nature are being undertaken by Members at all levels of development, with growing use of measures such as an "advance ruling regime," submission of "pre-arrival information" and pre- and post-importation audits or verifications. Each is an important tool both for achieving compliance with relevant domestic laws and regulations and for ensuring a trade-facilitative border environment that will foster greater trade and investment.

4. At the core of meeting the challenges presented today to border authorities is information – its rapid transmission, handling, and use. Many of the proposals already submitted to the negotiations have described proposed commitments for certain measures to be undertaken "away from the border" as a "modernization" of what is currently articulated in GATT Articles V, VIII, and X. Such proposals also implicitly underscore the complementarity of trade facilitation measures and compliance efforts. Our work on cooperation and information exchange will help round out the operation of the commitments envisioned by these types of proposals.

IV. A MECHANISM FOR INFORMATION EXCHANGE

5. For purposes of this proposal, information can be broken down into two types: the first is a defined universe of trade transaction information consisting of the "documentation" or data elements that relate to the movement of goods across a border – i.e., the specific information normally collected in association with the importation and exportation of goods (e.g., name of importing or exporting party, origin of goods, description of goods, HS classification, declared value, shipper, etc.). The other type of information is the secondary information that may relate to the trade transaction elements. The secondary information often arises in a context of a more advanced procedural or investigatory stage – generally presenting case-specific needs and sensitivities that require individual handling. Both information categories described can be the subject of various cooperation efforts, and as such are potentially matters that can be addressed as the negotiations proceed. However, this proposal deals with the first category of trade transaction information and sets out a proposed path to establishing a mechanism for exchange of information between Members. A future submission will set out a proposed path for addressing the second category of information.

6. Members should establish a mechanism that is practical and effective, involving a commitment pertaining to (1) a defined universe of information, (2) a practical basis for exchange that is efficient and not burdensome, and (3) a structure for information exchange that is forward-looking—both with regard to promoting continuous improvement in cooperation and commonality of information requirements.

7. These objectives also point to an information exchange mechanism that is ultimately built upon implementation of World Customs Organization's Customs Data Model. Developing such an information exchange mechanism based on defined universe of trade transaction information, ultimately linked to the implementation of the WCO Data Model, would serve a dual purpose: enhancing individual Members' ability to ensure compliance with domestic laws and regulations pertaining to goods crossing their borders, and improving Members' ability to facilitate trade by moving compliance functions "away from the border."

8. A critical element of moving this proposal forward would be to address the matter of confidentiality in handling of such information. This is often a complex matter, but at the same time developing an appropriate and effective commitment regarding treatment and handling of information subject to exchange will be a linchpin to success.

9. As part of the ongoing negotiations, this proposal lends itself well to addressing the issues of costs (and cost savings), technical assistance, implementation transitions and other needs of developing-country Members in a very concrete and practical manner. This proposal should be seen as a vehicle toward bringing benefit not only to individual Members at all levels of development, but also to the trading system as a whole – through the emergence of a virtual cooperation and information "network" involving all Members that can be built upon as needed.

10. As this is an initial proposal regarding an important subject area, we would make further submissions, either jointly or individually, to further advance the work and provide necessary further elaboration of the issues highlighted in this paper or other issues related to an effective customs cooperation mechanism.

V. PROPOSED NEXT STEPS

- Develop elements for a mechanism for exchange of defined universe of trade transaction information, establishing an efficient process exploring the potential for use of the WCO Customs Data Model, and addressing confidentiality matters.
 - Assess needs and priorities of developing countries related to implementation of the proposal and develop a path by which every Member can ultimately achieve full implementation of the mechanism.
 - Work with relevant international organizations and resource providers to address technical assistance and other issues as appropriate.
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