

**COMMUNICATION FROM INDIA**

The following communication, dated 9 February 2006, from the Delegation of India, is being circulated in advance of the Negotiating Group meeting of 15-16 February.

**PROPOSAL ON GATT ARTICLE VIII**

**I. INTRODUCTION**

1. The negotiations on Trade Facilitation present an opportunity to improve border clearance procedures relating to customs and other border clearance requirements. The Annex D modality under the July Framework puts special emphasis on identification of needs and priorities of developing countries as an integral part of the trade facilitation negotiations. India has attempted to identify the needs and priorities of its exporters through surveys. Based on the feedback received, India has identified those issues relating to border clearance which are not yet part of the negotiating proposals. These proposals are covered under the scope of GATT Article VIII. The proposals are aimed at addressing some specific problems faced by exporters.

**II. PROPOSALS**

2. Surveys and studies indicate that in a customs union, different member states adopt different border procedures such as standards (including terminologies, definitions, methods and procedures of sampling and analysis) for border clearance of agriculture and food products, such as for the presence of contaminants. This leads to differential treatment for the same goods by different member states of a customs union leading to acceptance of the same consignment at certain ports while being rejected at others. This creates uncertainty to trade and causes a market access barrier. Hence, it is proposed that members of a customs union should adopt the same border procedures which should include adoption of same standards including specifications, terminologies and definitions, inspection, sampling and test methods, for border clearance of agriculture and food products.

3. Surveys and studies have indicated that testing methods for imported goods adopted by some Members do not at times take into account their physical state. This leads to wrong test results thereby acting as a barrier to goods clearance. For instance, it has been revealed that the same sensitivity criteria are applied in some countries/customs territories for testing both fresh and dry products. This leads to divergent results as the concentration of a product increases on account of loss of water. For instance red chilli loses 60% of its weight upon drying and shrimp loses 90% of its weight upon freeze-drying, which alter the percentages of various contents considerably when analyzed on a wet basis or a dry basis. It is therefore proposed that, during the negotiations, we should adopt the

principle that testing methods should be based on specific product features and its physical state at the point of consumption, such as 'fresh', 'dehydrated' or 'otherwise processed'.

4. Surveys and studies indicate that documentation requirements in a customs union are at times not uniform. It has been observed that at times different agencies have authorized different versions of authentication forms. This compels an exporter to arrange for different formats of the form such as certificate of origin depending on the final destination of the product. It is proposed that all forms and documentation requirements relating to import clearance should be uniform for all members of a customs union.

5. Surveys and studies indicate that some Members have at times followed a system of destruction of a rejected food consignment instead of returning them to the exporter. This denies the exporter an opportunity to segregate the consignment into smaller lots and to examine each lot in detail and to identify the bad lots if possible. Furthermore, non-destruction would help the exporter salvage the consignment. This can be done by returning the consignment to the exporting country. No system of clearance of goods should be such that, on a routine basis, it leads to the destruction of cargo at the point of import on account of lack of conformity with standards. It is therefore proposed that all Members should have a provision that in case of rejection of a consignment on account of failure to meet certain standards, an option would be first given to return the rejected goods to the exporter and only upon a failure to exercise this option within a reasonable period of time, any other course of action, including destruction of goods could be considered.

6. In the ongoing negotiations, proposals have been made for adopting a system of authorized traders to extend expedited clearance to compliant traders upon fulfilment of certain criteria. In order to realize the full trade facilitative potential of any such system, if it is agreed upon during the negotiations, it is important to adopt the principle that norms for authorized trader systems shall be applied uniformly across a customs union and recognition of a trader as an authorized trader in one member of a customs union should automatically extend to the other members of the customs union.

7. In the ongoing negotiations, proposals have been made for adopting a risk management system for goods clearance. In order to realize the full trade facilitative potential of this system, it is important that a customs union should apply, to the extent possible, a harmonized risk management system across the entire customs union so that goods are cleared under similar circumstances in all member states of a customs union.

### **III. TECHNICAL ASSISTANCE**

8. Most of the proposals are aimed at improving border clearance procedures through procedural improvements. This may not require specific technical assistance. Some other proposals are more in the nature of systemic issues and may not again require any significant amount of technical assistance and capacity building. There may however be need to organize Workshops at the international level to apprise the border clearance officials of the requirements in force. We are open to discuss this issue.

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