

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.

PROPOSALS ON GATT ARTICLE X

1. The ongoing negotiations on trade facilitation give Members an opportunity to improve transparency of some measures which may not be in content laws, regulations, judicial decisions and administrative rulings themselves, but still have a significant contribution to improve predictability for traders. This relates to transparency of import alerts/rapid alerts and of detention of cargo. The negotiation also provides an opportunity to have a predictable appeal mechanism at the level of customs union for food consignments rejected at the level of a member state of a customs union. Similarly the negotiation also provides an opportunity to have a kind of appeal mechanism against a first test result of an import consignment by providing for a second confirmatory test.

2. The Annex D modalities 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 transparency which are not yet part of the negotiating proposals. These proposals are covered under GATT Article X.

I. IMPORT ALERTS/RAPID ALERTS

3. Some countries and customs unions have a border control mechanism for monitoring and ensuring the quality of imported food products by issuing a notification in case of detection of contaminated imports or of products not meeting the required standards. The notification is made to all members of a customs union/or to all ports of a country as well as to the exporter. This is called a system of import alerts/rapid alerts. As a result of such alert, a predetermined number of subsequent export consignments of the same exporter are subject to hundred per cent inspection at the border of that country/every port of a customs union.

4. There are basically two issues of concern:

- (i) It is observed that the alert may be imposed for a parameter for which different requirements have been adopted by different member states of a customs union. Therefore, implementing an alert, applicable to all member states of a customs union, based on such rejections where requirements are non-harmonized is not a correct approach, and,

- (ii) The process of termination of an alert is often far more onerous than its institution, thus creating a trade barrier. For instance, it is noticed that detection of contamination in one consignment at one port triggers a rapid alert across all ports of a customs union and, even after the required number of consecutive consignments are cleared at the first port which caused the issuance of rapid alert, the alert notification continues to be in effect across the customs union due to an onerous requirement that the same prescribed number of consignments should be cleared at every port of the customs union. This, at times, is almost impossible to achieve as a country/exporter may not trade with all member states of a customs union, or not have the same volume of trade with all member states. Furthermore, termination of a rapid alert is a slow process and there is considerable delay in sending communications to all Customs ports. This does not also get the same publicity as its institution in the first place and leads to a continued trade chilling effect for the exporters. Trade facilitation requires that any system of administration of alert should not by itself create barriers to trade.

Proposal

5. In order to address the aforementioned problems of traders, the following proposals are made:
- (i) In order to ensure that application of a system of import/rapid alert does not by itself create a barrier to trade, it should be imposed all across a customs union only if uniform standards are applied by all of its member states.
 - (ii) A system of import/rapid alert should not be applied with a view to, or with the effect of, creating unnecessary obstacles to international trade. For this purpose, application of import/rapid alert systems shall not be more trade restrictive than necessary to pursue a legitimate objective, taking account of the risks that non-fulfilment would create.
 - (iii) A notification against a country/exporter under a system of import/rapid alert restricting or prohibiting imports shall not be issued unless it has been established on the basis of positive evidence that imports from the country/exporter concerned have not fulfilled the prescribed objective standards.
 - (iv) A notification issued under a system of import/rapid alert restricting or prohibiting imports shall not be maintained if circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade restrictive manner. Circumstances giving rise to import/rapid alert would be deemed to no longer exist if [x] successive consignments imported from the country/exporter concerned, after the import/rapid alert has been issued, fulfil the prescribed objective standards.
 - (v) The speed and standard of publicity of denotification of such alert shall be of the same level as its issuance. Termination of an import/rapid alert shall be made through a public notice to be issued no later than two weeks after a decision has been taken to terminate the import/rapid alert.

II. DETENTION

6. Surveys indicate that exporters face difficulty on account of lack of information of a consignment detained for detailed inspection particularly when such detention leads to delay of clearance of a consignment. The present negotiation gives an opportunity to improve the transparency requirements of cargo detained for inspection at the border.

Proposal

7. When goods are detained for inspection by customs or any other authority, there should be a mechanism to inform the importer regarding such detention. This can be done through different methods like issuance of a detention memo to the importer or his authorized agent or by having an on-line system of indicating the status of clearance of a consignment.

III. TEST PROCEDURES

8. Studies and surveys indicate that lack of a system of a second reconfirmatory testing of a sample leads to unjustified denial of market access to goods. The first test result of a sample may at times be inaccurate. The first test may also lead to adverse result on account of several factors like lack of sensitivity of equipment, testing in a non-accredited laboratory, use of non-validated procedures, human error, a problem in size of sample, etc. It is therefore important that importers should have an opportunity to get their consignment retested for a confirmatory test result. This can be regarded as a kind of an appeal procedure for testing of samples.

Proposal

9. It is proposed that each Member should allow importers or exporters a right of a second confirmatory test of a sample where the first test result has given an adverse finding. A clear procedure be laid down for such confirmatory test including a validated test method and a list of accredited laboratories be published where confirmatory tests can be carried out. For a customs union, the results of a confirmatory test carried out in one member state of a customs union should be valid and acceptable in all other member states of the customs union.

IV. APPEAL MECHANISM

10. Surveys and studies indicate that any adverse finding of inspection authorities at the level of a member state of a customs union takes a long time for redressal because an appeal process has to be first completed at the level of the member state of a customs union before an appeal can be filed to the authorities at the customs union level. Particularly, in case of dispute concerning inspection decisions of food items, a quick resolution of the dispute would help to facilitate trade.

Proposal

11. Mechanisms for redressal of adverse findings of inspection authorities at the import point should be so designed that quick and uniform decisions are provided without inordinate increase in cost/ time. Necessary arrangements that allow appeals to be heard and decided at the final decision-making levels in the shortest possible time-frame should be ensured.

V. TECHNICAL ASSISTANCE

12. Some proposals would require establishing new procedures or an institutional system to improve transparency. Some of these requirements can be met in tandem with implementation of other proposals. We are open to a discussion on needs of Technical Assistance and Capacity Building.
